

EXHIBIT C-1

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OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE - 17TH FLOOR
BOSTON, MASSACHUSETTS 02108

IN THE MATTER OF:

TELEXFREE, INC

Docket No. 2014-0004

ON THE RECORD INTERVIEW OF JAMES MERRILL, a witness called by and on behalf of The Office of The Secretary of State, Securities Division, One Ashburton Place, Boston, Massachusetts 02108, before Elizabeth Ann Everson, a Court Reporter and Notary Public in and for the Commonwealth of Massachusetts, commencing on Tuesday, March 25, 2014 at 10:18 a.m.

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
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Mr. James Merrill

Mr. Leone	11			
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Mr. O'Hara	19			
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Mr. Neelon	54			
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>
1	One-Page Printout from Telexfree.com
2	One-Page Printout from Telexfree.com
3	Telexfree Business Presentation
4	Two-Page Printout from Telexfree.com
5	One-Page Printout from Telexfree.com
6	Email Dated 4/23/13 with One-Page Attachment

P R O C E E D I N G S

Tuesday, March 25, 2014

10:18 a.m.

MR. LEONE: Good morning. We are on the record. Today is March 25, 2014 and the time is 10:28. This on the record investigative testimony is being taken pursuant to the authority conferred on the Office of the Secretary of the Commonwealth by Massachusetts General Laws, Chapter 110A §407B. My name is Anthony Leone and I'm an enforcement attorney with the Massachusetts Securities Division. With me today is Tim O'Hara and Bill Neelon, William Neelon also attorneys with the Division. So today, a few ground rules. The Division controls the record. We only go on or off the record at the direction of one of the Division staff members. If you need to take a break at anytime, just let me know and we will do so. The only caveat there is if a question is pending, I would ask you to answer the question for before we take a break, okay?

1 THE WITNESS: That's fine.

2 MR. LEONE: So please answer all
3 questions verbally as non-verbal answers
4 are not reflected on the record. So if I
5 ask how may pages the book is, not, the
6 book was this high, you know, okay?

7 THE WITNESS: Okay.

8 MR. LEONE: If you do not understand a
9 question, indicate so and I will try
10 rephrase it. Bill and Tim will also try to
11 rephrase it if it's not clear. However,
12 any answer you provide to a question will
13 indicate that you have understood the
14 question as it was asked. Please provide
15 all of your answers on an if-you-know
16 basis. Unless the question indicates so,
17 you should no guess or speculate. When
18 using the proper name of an individual or
19 entity for the first time, please spell the
20 entire name for the record. Please wait
21 until a question has been completed until
22 you answer. I'll advise the court reporter
23 if I am talking too fast or one of my
24 colleagues are -- and if anyone has a cell

1 phone, if you could turn it off at this
2 moment or put it on silent. Do you
3 understand that your testimony today is
4 pursuant to a subpoena?

5 THE WITNESS: Yes.

6 MR. LEONE: Do you consent to being
7 placed under oath?

8 THE WITNESS: Yes.

9 MR. LEONE: Would you please place the
10 witness under oath?

11 *James Merrill, first being identified*
12 *by his Massachusetts Driver's License, and*
13 *duly sworn by the Notary Public, was*
14 *examined and testified as follows:*

15 MR. LEONE: Could you please state and
16 spell your full name for the record?

17 THE WITNESS: James Merrill, J-A-M-E-S,
18 M-E-R-R-I-L-L.

19 MR. LEONE: Do you have a middle name?

20 THE WITNESS: Matthew.

21 MR. LEONE: Could you spell it for us?

22 THE WITNESS: M-A-T-T-H-E-W.

23 MR. LEONE: Mr. Merrill, your testimony
24 has been requested by the Division as part

1 of an inquiry into whether there have been
2 violations of the Massachusetts Uniform
3 Securities Act. However, the facts
4 developed in this investigation might
5 constitute violations of other state or
6 federal criminal or civil laws. Mr.
7 Merrill, do you understand that you may
8 assert your rights under the Fifth
9 Amendment of the United States Constitution
10 and Article 12 of the Massachusetts
11 Declaration of Rights and as such refuse to
12 answer any question which may tend to
13 incriminate you?

14 THE WITNESS: I do.

15 MR. LEONE: And Mr. Merrill, are you
16 being represented by counsel today?

17 THE WITNESS: I am.

18 MR. LEONE: And counsel, if we could
19 go down the line and if you could identify
20 yourselves for the record, that would be
21 great.

22 MR. BERTHIAUME: Mark Berthiaume from
23 Greenberg Trauig with me is Erin Hayes of
24 our office and Jeff Babener, B-A-B-E-N-E-R.

1 MR. LEONE: Thank you. Counsel, again
2 going down the line, do you represent Mr.
3 Merrill in his individual capacity today?

4 MR. BERTHIAUME: I am representing the
5 corporation, but for purposes of today's
6 testimony, I am here representing Mr.
7 Merrill.

8 MR. LEONE: And when you say
9 representing the corporation, could you
10 identify the corporation?

11 MR. BERTHIAUME: Telexfree, Inc.

12 MR. LEONE: And Ms. Hayes, are you
13 likewise --

14 MR. BERTHIAUME: The same.

15 MR. LEONE: The same.

16 MR. BABENER: Similar.

17 MR. LEONE: Similar or the same?

18 MR. BABENER: The same.

19 MR. LEONE: Counsel, if you're aware,
20 does your firm represent any other entity
21 or person in this matter?

22 MR. BERTHIAUME: Other than Carlos
23 Wanzeler who will be testifying here
24 tomorrow; we've discussed that previously.

1 MR. LEONE: Mr. Merrill, do you
2 understand that you have the right to an
3 attorney who represents you in your
4 personal capacity and who represents your
5 interests and only your interests?

6 THE WITNESS: I do.

7 MR. LEONE: Mr. Merrill, do you
8 understand that giving testimony under oath
9 as you are today subjects you to the pains
10 and penalties of perjury?

11 THE WITNESS: I do.

12 MR. LEONE: Even though we subpoenaed
13 your testimony today, you should understand
14 that in addition to answering questions
15 from the Division, this is your opportunity
16 to provide any exculpatory information that
17 we may not have. With those
18 understandings, are you prepared to
19 proceed?

20 THE WITNESS: Sure, yes.

21 (BY MR. LEONE)

22 Q. Are you on any medications or under any other
23 impairment that could affect your ability to
24 testify truthfully and competently today?

1 A. Just a head cold.

2 Q. Are you taking any medication for that?

3 A. No, no, no.

4 Q. I'm going to ask you a few questions about
5 conversations or activity that may have
6 occurred between the time that you received
7 the subpoena from the Division to provide
8 testimony and your arrival here today. I
9 want to make it clear that I do not want to
10 know about conversations that you had with
11 counsel. In addition, I want to make it
12 clear that I do not want to know about
13 conversations you had with counsel in
14 response to any question that I ask you
15 today; do you understand that?

16 A. Mm-hmm.

17 Q. Prior to coming here today, other than
18 counsel, who else is aware that you're
19 providing testimony?

20 A. Carlos Wanzeler.

21 Q. Anyone else?

22 A. No, I don't think so. I don't know if
23 anybody in our office knows about this. I
24 think maybe some people in the office know

1 about this.

2 Q. So other than Carlos Wanzeler -- and can you
3 spell his name for the record?

4 A. W-A-N-Z-E-L-E-R.

5 Q. Thank you. Are you aware of any other
6 specific person?

7 A. I'm aware that agents had come to our office
8 after they received a subpoena and -- but I
9 never spoke to them, so I don't know who else
10 knows about that.

11 Q. Would those agents be aware of your testimony
12 here today?

13 A. No.

14 Q. And how does Mr. Wanzeler know about your
15 testimony here today?

16 A. He just knows because we both got subpoenaed.

17 Q. And did you have any conversations with Mr.
18 Wanzeler about the subpoenas?

19 MR. BERTHIAUME: Certainly, there have
20 been conversations in the presence of
21 counsel.

22 (BY MR. LEONE)

23 Q. Other than those in the presence of counsel,
24 have you had conversations with Mr. Wanzeler?

1 A. No, mostly in counsel, or counsel.

2 Q. So the record is clear, have you had
3 conversations with Mr. Wanzeler outside of
4 the presence of counsel regarding these
5 subpoenas today?

6 A. I don't recall to be honest with you if we
7 spoke in front of counsel only or -- he knows
8 I'm here.

9 Q. Does anybody from your family know that you
10 are here today?

11 A. No.

12 Q. Prior to coming here today, what, if any,
13 documents other than those that may have been
14 presented to you by counsel did you review?

15 A. The ones presented by counsel.

16 Q. Moving forward, Mr. Merrill, what's your date
17 of birth?

18 A. /61.

19 Q. Have you gone by any other name or names?

20 A. No, other than Jim or Jamie.

21 Q. Do you consider those to be nicknames?

22 A. Yes.

23 Q. Any other nicknames besides Jim or Jamie?

24 A. No.

1 Q. Where do you currently live?

2 A. One Coburn Drive in Ashland, Massachusetts.

3 Q. And how long have you lived there?

4 A. Since approximately '96.

5 Q. Is that a single-family residence?

6 A. Single-family, yes.

7 Q. Do you live at this Ashland residence with
8 anyone else?

9 A. My family, my wife and my three children.

10 Q. And can you just identify them for the
11 record, please?

12 A. Kristen Merrill is my wife. [REDACTED]
13 is my son. [REDACTED] is my daughter
14 and [REDACTED] is my son.

15 Q. Do you own the Ashland property?

16 A. I do. I have a mortgage.

17 Q. You have a mortgage on the property. How
18 much is the mortgage for?

19 A. 190.

20 Q. Is that a guess?

21 A. Yes. It's pretty -- it's between 190 and
22 200, last time I looked.

23 Q. Do you have any home equity line other than
24 the mortgage?

1 A. No.

2 Q. Where did you live prior to the Ashland
3 residence?

4 A. Hopkinton.

5 Q. Where in Hopkinton?

6 A. Lincoln Street and I believe it was 4 Lincoln
7 Street.

8 Q. And that would be prior to 1996?

9 A. Correct.

10 Q. And how long did you live at the Hopkinton
11 address?

12 A. I think that was 19 -- we got married in
13 1990. We lived in an apartment for a year,
14 so '91, I think.

15 Q. So from 1991 until 1996 --

16 A. We were in Hopkinton and we were in an
17 apartment in Westborough for one year when we
18 got married in 1990.

19 Q. Have you lived in the United States for your
20 entire life?

21 A. I have.

22 Q. Currently, other than the Ashland property,
23 do you own any other real property in the
24 United States?

1 A. There is an apartment that Carlos and I had
2 purchased together in Worcester on Prospect
3 Street, I believe.

4 Q. What is the address of that apartment?

5 A. I can get you that. I don't know. We never
6 really did anything with the apartment. We
7 fixed it up. I don't even know if it's
8 rented. He kind of handles that.

9 Q. Do you have a date when you purchased that
10 apartment?

11 A. It would have been 2012, I believe, 2012.
12 I'm not 100 percent sure.

13 Q. Do you recall what the total purchase price
14 for that apartment was?

15 A. 70 thousand.

16 Q. And do you recall how much money you put up
17 out of that 70 thousand?

18 A. We split it.

19 Q. So the total purchase price would have been
20 140 thousand?

21 A. No, no, no. 35, I think. Everything was
22 50/50 so --

23 Q. Do you own any other real property in the
24 United States?

1 familiar with an entity called Cleaner Image
2 Associates, Inc.?

3 A. Yes.

4 Q. And what is that entity?

5 A. That's my janitorial cleaning service.

6 Q. And is that entity active?

7 A. It is.

8 Q. When did you start with Cleaner Image
9 Associates?

10 A. Approximately '86.

11 Q. When you started it in '86, were you the only
12 director or officer of Cleaner Image
13 Associates?

14 A. Yes.

15 Q. And are you still the only owner of Cleaner
16 Image Associates?

17 A. Yes.

18 Q. Where is Cleaner Image Associates located?

19 A. It's really basically run out of my house. I
20 have a P.O. Box in Southborough.

21 Q. Do you have any employees?

22 A. No, I subcontract all of my work.

23 Q. Who do you subcontract to?

24 A. Wow Cleaners.

1 Q. Could you spell that for the record?

2 A. W-O-W Cleaners.

3 Q. And is this a residential cleaning service or

4 --

5 A. No, commercial.

6 Q. And how many properties are under the Cleaner
7 Image Associates Brand?

8 A. How many clients?

9 Q. Yes, that would be fair.

10 MR. BERTHIAUME: Current?

11 (BY MR. LEONE)

12 Q. Current clients.

13 A. About ten to fifteen.

14 Q. Where are these clients located?

15 A. In the Worcester area, generally.

16 Q. Are they in various office buildings or --

17 A. Mm-hmm.

18 Q. Could you describe the type of clients --

19 MR. BERTHIAUME: That was a yes?

20 THE WITNESS: Yes. I'm sorry, yes. We
21 have a medical supply -- a medical office
22 building. We have FedEx. We have mostly
23 manufacturing -- Seaman's Corp, we do some
24 floor work for them and we do Tyco

1 Electronics and then a lot of smaller
2 offices. I can't -- right now I'm drawing
3 a blank on some of these customers that we
4 have.

5 (BY MR. LEONE)

6 Q. Okay. Well, if it comes to your mind later
7 on --

8 A. Okay.

9 Q. -- we can always come back to it.

10 A. Commonwealth Creative Associates in
11 Framingham, BioSurfaces in Ashland. I can put
12 together a list for you. It's a very small
13 business right now.

14 Q. Would you say that the approximately ten to
15 fifteen clients that you currently have, is
16 that a high-water mark for the firm?

17 A. Oh, no, no, no.

18 Q. What would the high-water mark be and when
19 was the high-water mark?

20 A. At one point we did between around 800 to 900
21 thousand dollars a year.

22 Q. Could you provide a time period for that
23 revenue?

24 A. Late 90s, mid to late 90's.

1 Q. And how many clients would be represented in
2 that 800 to 900 thousand dollar figure?

3 A. About 40.

4 (BY MR. O'HARA)

5 Q. Mr. Merrill, so today, so we have some sort
6 of basis to compare, what's the -- in dollar
7 terms, kind of the business level at
8 currently?

9 A. I think we do approximately 20 thousand a
10 month and at the high level that would have
11 -- I don't know, 600 a month, I'm sorry, 60
12 to 70 a month.

13 (BY MR. LEONE)

14 Q. Could you describe your current position with
15 Cleaner Image Associates?

16 A. I've been sales and admin basically and then
17 I sub out my work.

18 Q. Have you always been sales and admin?

19 A. Yes, and I don't put very much time into the
20 business right now and haven't.

21 Q. The subcontractor that you use, Wow Cleaners,
22 how did you become aware of Wow Cleaners?

23 A. I can't recall. It was a cleaner, I believe,
24 that started his own business and we hired

1 him as our cleaner once they became -- got
2 their insurance and all that.

3 Q. And this person that you're referring to,
4 this he, who is that?

5 A. Ozieas Olviera.

6 Q. Could you spell that for the record?

7 A. O-Z-I-E-A-S.

8 Q. And his last name?

9 A. That's Olviera.

10 Q. Could you spell it for the record?

11 A. Oh, I'm sorry. O-L-V-I-E-R-A, I believe,
12 Olviera.

13 Q. Moving forward, Mr. Merrill, are you familiar
14 with an entity called Telexfree,
15 Incorporated?

16 A. Yes.

17 Q. And Mr. Merrill, are you familiar with an
18 entity called Telexfree, LLC?

19 A. Yes.

20 Q. Where was Telexfree, Incorporated
21 incorporated?

22 A. In Massachusetts.

23 Q. And when was it incorporated?

24 A. April of 2012, I believe.

1 Q. Who filed Telexfree, Incorporated's
2 incorporation documents?

3 A. Joe Craft.

4 Q. Who is Joe Craft?

5 A. Joe Craft is our CPA and our acting CFO right
6 now.

7 Q. When you say we, who are you referring to, or
8 our, excuse me?

9 A. Carlos Wanzeler. Well, our meaning
10 Telexfree, Inc. and LLC.

11 Q. When did Telexfree hire Joe Craft as CPA?

12 A. Sometime around that time, I believe. I'm
13 not exactly sure when.

14 Q. So would it be fair to say that Telexfree
15 hired Joe Craft around April 2012?

16 A. Probably, yes.

17 Q. Who files Telexfree, Incorporated's annual
18 reports?

19 A. Joe Craft.

20 Q. Currently, who is listed as Telexfree,
21 Incorporated's officers and directors?

22 A. Carlos Wanzeler, W-A-N-Z-E-L-E-R.

23 MR. BERTHIAUME: You don't have to
24 spell it every time.

1 (BY MR. LEONE)

2 Q. Only the first time, thank you, Mr. Merrill.

3 A. Oh, okay.

4 Q. Any others?

5 A. Myself.

6 Q. Are there any other individuals listed as
7 Telexfree, Incorporated's officers and
8 directors currently?

9 MR. BERTHIAUME: When you say listed,
10 on any particular document or just who are
11 the current officers and directors of --

12 MR. LEONE: That would be a better way
13 of stating it.

14 MR. BERTHIAUME: And it's Inc. we're
15 talking about?

16 MR. LEONE: We're talking about Inc.,
17 correct.

18 THE WITNESS: Right, Inc. is Carlos
19 Wanzeler and myself.

20 (BY MR. LEONE)

21 Q. And according to the corporate documents,
22 what is Carlos Wanzeler's title?

23 MR. BERTHIAUME: I just -- when you
24 say, "According to the corporate

1 documents," I'm not sure what that means.
2 I mean, again, if you're asking what's his
3 current title, that's something he can
4 answer, but according to corporate
5 documents, I'm not sure what you're
6 referring to.

7 MR. LEONE: Sure.

8 (BY MR. LEONE)

9 Q. I believe you testified that Joe Craft files
10 an annual report for Telexfree, Incorporated,
11 correct?

12 A. Correct.

13 Q. Could you describe what the annual report
14 entails?

15 A. Not exactly. I don't really know what the
16 document states.

17 Q. Have you ever filed an annual report for
18 Telexfree, Incorporated?

19 A. I have never done it myself, no.

20 (BY MR. O'HARA)

21 Q. What is the purpose of the annual report that
22 Mr. Craft files for Telexfree, Incorporated?

23 MR. BERTHIAUME: If you know.

24 THE WITNESS: I don't know.

1 (BY MR. O'HARA)

2 Q. But you do know that he files an annual
3 report?

4 A. Yes.

5 Q. How do you know that?

6 A. Because he lets us know that he needs to file
7 this annual report.

8 (BY MR. LEONE)

9 Q. So generally, what is Carlos Wanzeler's
10 position with Telexfree, Incorporated?

11 A. He handles most of the marketing and
12 technology end of the business.

13 Q. Does he have a general title?

14 A. I think his title is treasurer on one of
15 those reports, but I'm 100 percent sure, a
16 document, a corporation document.

17 Q. Okay. And would he have any other title that
18 you can think of?

19 A. No.

20 Q. And generally, what is your title with
21 Telexfree, Incorporated?

22 A. I'm president. I handle most of the admin
23 and vendor relations and product development.

24 Q. Have Carlos Wanzeler and yourself always been

1 listed as officers and directors of
2 Telexfree, Incorporated?

3 A. Yes.

4 Q. In the past have any other individuals also
5 been listed as officers and directors of
6 Telexfree, Incorporated?

7 A. Incorporated, I believe so.

8 Q. And who would those individuals be?

9 A. Carlos Wanzeler and myself.

10 MR. BERTHIAUME: The question was
11 whether any others --

12 THE WITNESS: Oh, no. It was an S-
13 Chapter, so Carlos Costa would not be on
14 that, I believe is what happened.

15 (BY MR. LEONE)

16 Q. Does Telexfree, Incorporated have an office
17 location?

18 A. Yes.

19 Q. And where is that office location?

20 A. 225 Cedar Hill Street in Marlborough, Mass.,
21 Suite 118.

22 Q. Has Telexfree, Incorporated always been
23 located at this specific address?

24 A. No, we used to be upstairs in the Regis

1 Suite, Suite 200.

2 (BY MR. O'HARA)

3 Q. What's the Regis Suite?

4 A. It's office condos. You can get individual
5 offices. We had five or six offices up there
6 before we moved down to 118.

7 Q. Okay. So when you say you had these
8 individual offices, how does that -- what do
9 you mean by that? How is that different from
10 an office suite?

11 A. There is other companies intermingled. They
12 take a section of the building and they break
13 it down into individual offices and we
14 retained five or six of them. It allowed us
15 to expand and contract if we needed to.

16 Q. Okay. And in this space there would be more
17 than five or six offices; is that how it
18 would work?

19 A. There is, I don't know, maybe 40 some-odd
20 offices in this office space and we had five
21 or six of them.

22 Q. Okay. So your offices could be directly
23 adjacent to some other company's offices?

24 A. Correct.

1 Q. Okay. And was there kind of like a shared
2 secretary or --

3 A. Yes, and, you know, lunch area, conference
4 rooms.

5 Q. Copy machines, stuff like that?

6 A. Yes, yeah. We generally used our own, but
7 they did have something we could use.

8 (BY MR. LEONE)

9 Q. Could you provide a time period for when
10 Telexfree, Incorporated was in the Regis
11 office space?

12 A. Yeah, 2012, early 2012, I don't know exactly
13 when, and up until -- to be honest with you,
14 actually, we still have that office, the
15 Regis offices, officially on the books until
16 the end of April, so --

17 Q. So would there be some sort of contract --

18 A. Yes.

19 Q. -- between Telexfree, Incorporated and Regis?

20 A. Yes, yes, and that ends in April.

21 Q. So when did Telexfree move down to Suite 118?

22 A. That would have been the end of December,
23 beginning of January. We had some work we
24 needed to do down there before, you know, we

1 got customer service down there.

2 MR. BERTHIAUME: December 2013,
3 January 2014?

4 THE WITNESS: I'm sorry. Yes, correct.

5 (BY MR. LEONE)

6 Q. What prompted the move from the Regis office
7 space to Suite 118?

8 A. More space. We have 4,500 square feet of
9 space now, whereas I don't even know how
10 much. We just had five or six individual
11 offices and we needed to move. We were
12 growing.

13 Q. How many offices are located in Suite 118?

14 A. Well, we have a big office area that is
15 cubicles now, that is 12 individual spaces
16 and that is going to expand to 30 and then we
17 have five executive offices, a conference
18 room and a -- there is a training area where
19 we have two other cubicles to service
20 customers and a front reception area as well
21 as a kitchen area.

22 Q. How much space do the 12 cubicles that are
23 currently in there occupy?

24 A. I can't exactly say, but in that same space,

1 we were able to re-engineer some cubicles to
2 fit 30 people in the same are that there is
3 12. There is 12 or more bigger -- there is
4 four rows of -- yeah, three rows of four and
5 then -- I'm not exactly sure. But the
6 cubicles right now in the same space, this
7 person came in and tried to help us get more
8 out of this area and we are now putting in
9 this cubicle area enough seating for 30
10 people.

11 Q. Moving forward, I believe you testified that
12 you were familiar with an entity called
13 Telexfree, LLC, correct?

14 A. Mm-hmm.

15 Q. Where was Telexfree, LLC organized?

16 A. Nevada.

17 Q. When was Telexfree, LLC organized?

18 A. August 2012.

19 Q. So that would have been after the
20 incorporated entity, correct?

21 A. Correct.

22 Q. Why was Telexfree, LLC created?

23 A. For tax purposes on advice from our CPA.

24 Q. And that would be Joe Craft?

1 A. Joe Craft.

2 Q. What type of tax purposes; what do you mean
3 by that?

4 A. To save on taxes as any company would like to
5 do.

6 Q. Is there anything in particular about the tax
7 laws in Nevada that prompted you to choose
8 Nevada?

9 A. Yes, I believe there is no state tax in
10 Nevada.

11 Q. And who filed Telexfree, LLC's organizational
12 document?

13 A. Joe Craft.

14 Q. Who is listed as Telexfree, LLC's members
15 today?

16 A. Today, Carlos Wanzeler and James Merrill.

17 Q. Have there been other members in the past?

18 A. Yes, Carlos Costa.

19 Q. Anyone else?

20 A. No, that was it.

21 Q. When did Carlos Costa serve as a member for
22 Telexfree, LLC?

23 A. From the beginning in August, I'm sorry, in
24 2012.

1 Q. Until when?

2 A. I don't recall the date.

3 Q. Would it have been within the last year?

4 A. Yes. I can't say for 100 percent sure but it
5 was within the last -- I would say, yes.

6 Yes, it would have been within the last year.

7 Q. So to be clear, you would approximate that
8 Carlos Costa remained as a member of
9 Telexfree, LLC within the last year?

10 A. Yes.

11 Q. Within the last six months?

12 A. I don't think so.

13 Q. Does Telexfree, LLC also have an office
14 location?

15 A. Yes, they have a virtual office. I've never
16 been there. I believe we have a registered
17 agent there, but I don't know much about
18 that.

19 Q. I'm a little confused. What do you mean by a
20 virtual office?

21 A. We have an address that we receive mail at
22 but no personnel.

23 Q. And what is that address that you receive
24 mail at?

1 A. 4705 South Durango, Las Vegas, Nevada. I'm
2 not exactly sure of the numbers.

3 Q. While the specific address may be a little
4 off, has Telexfree always had a mailing
5 address?

6 A. Yes, as long as we've had that incorporation,
7 I believe.

8 Q. Okay. What is your understanding of the
9 difference between Telexfree, Inc. and
10 Telexfree, LLC?

11 A. Telexfree, Inc. services more of the global
12 enterprise. Telexfree, Inc. was --

13 MR. BERTHIAUME: I think you just said
14 Telexfree, Inc. originally.

15 THE WITNESS: Oh, I'm sorry.
16 Telexfree, LLC handles more of the global
17 business, international.

18 (BY MR. LEONE)

19 Q. Okay. And just so the record is clear, why
20 don't we try that again. What is your
21 understanding of the difference between
22 Telexfree, Inc. and Telexfree, LLC?

23 A. It was set up by our CPA and Inc. always had
24 merchant services attached to Inc. and we had

1 a history with that, was the only reason we
2 kept Inc. and LLC just evolved for tax
3 purposes and we were -- at some point I
4 believe we were going to try to merge the two
5 but that never happened because we had to
6 keep that history for our merchant services.

7 Q. Okay. Would it be fair to say that both
8 conduct business related to the Telexfree
9 brand?

10 A. Yes, I would say Inc. probably more of an
11 administration role and the marketing out of
12 LLC.

13 Q. Okay. For clarity today, moving forward, I'm
14 going to refer to both of them combined as
15 Telexfree unless I indicate otherwise, okay?

16 A. Okay.

17 Q. Do you have an ownership interest in either
18 Telexfree entity?

19 A. Yes.

20 Q. Which one?

21 A. Inc. and LLC.

22 Q. Starting with the incorporated entity, what
23 is your ownership interest?

24 A. At this point, I think it's 50 percent.

1 Q. And who holds the other ownership --

2 A. Carlos Wanzeler.

3 Q. -- portion? And again, Mr. Merrill, if you
4 could just wait until I finish the question.

5 A. I'm sorry.

6 Q. That's okay. So with the incorporated
7 entity, you hold 50 percent ownership
8 interest an Carlos Wanzeler holds the other
9 50 percent interest?

10 A. That is correct.

11 Q. And in regards to the LLC?

12 A. I believe it is the same at this point.

13 Q. For Telexfree, Inc., has the ownership
14 interest changed over time?

15 A. No, I think that always was, I believe.

16 Q. Do you think it always was or do you know
17 that it always was?

18 A. I believe because it was an S-Chapter, Carlos
19 Costa was never involved in that entity, but
20 I'm not 100 percent sure.

21 Q. Has the ownership interest in Telexfree, LLC
22 changed over time?

23 A. Yes.

24 Q. And how has it changed?

1 A. It started off with Carlos Wanzeler at 50
2 percent, Carlos Costa at 30 percent and James
3 Merrill at 20 percent.

4 Q. And when was Carlos Costa's percentage
5 ownership changed?

6 A. Whenever that change went into effect and I'm
7 not sure of that date.

8 Q. And the change you're referencing is the
9 change removing Carlos Costa as a member from
10 the LLC, correct?

11 A. Correct.

12 (BY MR. O'HARA)

13 Q. When Carlos Costa was removed as a member of
14 the LLC, did you purchase his membership
15 interest from him?

16 A. That I'm going to have to defer to Joe Craft
17 because I think that's trying to be
18 determined right now, how we're going to
19 handle that. So I'm -- I never purchased
20 anything.

21 Q. But I heard you correctly when you said you
22 now own 50 percent of the LLC; is that
23 correct?

24 A. That's correct.

1 Q. Do you know why Mr. Costa ceased to be a
2 member of the LLC?

3 A. It was a legal decision on his part and I'm
4 not 100 percent sure of why that happened.

5 (BY MR. LEONE)

6 Q. When you say a, "Legal decision," what do you
7 mean by that?

8 A. He wanted to be off the -- he wanted to have
9 his name off the LLC.

10 (BY MR. O'HARA)

11 Q. How do you know that?

12 A. He requested it.

13 Q. Did he make the request to you?

14 A. To Wanzeler.

15 (BY MR. LEONE)

16 Q. And how do you know that?

17 A. Carlos told me, Carlos Wanzeler told me...

18 Q. Did Mr. Costa make the request in writing?

19 A. I don't believe so, nothing that I seen. Oh,
20 there was -- there was something Joe Craft
21 had that we had to sign to do that. There
22 was a document, but I think it was an
23 incorporation document. I'm really not sure.
24 It had something to do with minutes in a

1 meeting asking to make this change.

2 Q. Are you familiar with an entity called Disk
3 Avontade?

4 A. Yes.

5 Q. And could you spell Disk Avontade for the
6 record?

7 A. D-I-S-K, A-V-O-N-T-A-D-E.

8 Q. How are you familiar with Disk Avontade?

9 A. That was the business that evolved out of
10 our, Carlos and I's, involvement with another
11 network marketing company called
12 WorldxChange. We were agents, very
13 successful with this company and we tried to
14 get this company to get involved in the early
15 stages of VoIP and we wanted to represent
16 them in doing that. They refused. So that
17 was the beginning of our telecom business in
18 the early 2000s where we started to invest in
19 our own telecom equipment to run VoIP calls
20 through.

21 Q. When was Disk Avontade created?

22 A. Early 2000s. I'm not exactly sure of the
23 date.

24 Q. Do you know if it's an incorporated entity?

1 A. Yes. Well, Brazilian Help, Inc. is the
2 incorporation and Disk Avontade I believe is
3 the d/b/a of Brazilian Help, Inc.

4 Q. Are you an officer or director of Brazilian
5 Help?

6 A. I'm not an officer but I help Carlos with
7 that business.

8 Q. Do you have a title?

9 A. No.

10 (BY MR. O'HARA)

11 Q. Do you have any --

12 MR. BERTHIAUME: And we're taking --
13 excuse me. I didn't mean to interrupt.
14 We're talking about Brazilian Help, Inc.
15 currently?

16 THE WITNESS: Currently, correct.

17 (BY MR. LEONE)

18 Q. Have you ever had a title with Brazilian
19 Help, Inc.?

20 A. No, we just work together and made decisions
21 on that business.

22 (BY MR. O'HARA)

23 Q. Mr. Merrill, do you have any ownership
24 interest in Brazilian Help, Inc.?

1 A. No.

2 (BY MR. LEONE)

3 Q. What is your understanding of the term,
4 "Title" when I use it?

5 A. I'm assuming president or vice president or
6 chairman and no, it's a pretty informal
7 company.

8 Q. I believe you testified that Disk Avontade
9 was created to get into the early stages of
10 VoIP, correct?

11 A. Correct.

12 Q. And how did it plan to do that?

13 A. Originating our own calls and terminating
14 them, getting termination companies to help
15 us take the call the last mile and build a
16 customer base.

17 Q. Was it set up as at multi-level marketing
18 company?

19 A. No. At different times we tried to create
20 different multi-level -- well, Disk Matrix
21 was one and it just never took off. So the
22 majority of our customers come through sales
23 to Brazilian stores.

24 Q. Could you describe the Disk Matrix?

1 A. A uni-level marketing program where if I
2 enroll you, you sell some products, I get an
3 override commission, you in turn enroll
4 somebody else, you get an override commission
5 when product sells. But that was a few years
6 ago and I don't recall the compensation plan.
7 I'm not ever really involved in the
8 compensation plans. I help get the
9 termination companies to work with us.

10 Q. Could you provide a time period that Disk
11 Avontade used the Disk Matrix?

12 A. Less than six months, I would say. It never
13 really got off the ground.

14 Q. And when did Disk Avontade first attempt to
15 use the Disk Matrix?

16 A. 2008, maybe. I'm not 100 percent sure.

17 Q. What business did Disk Avontade conduct from
18 the early 2000s until 2008?

19 A. We created a base of customers that used our
20 services. I believe at this point we have
21 2,000 customers that use similar unlimited
22 services like we sell for Telexfree.

23 MR. BERTHIAUME: You're saying there
24 are 2,000 customers currently?

1 THE WITNESS: I believe so. I can't
2 say 100 percent sure because I don't look
3 at those numbers very often.

4 MR. BERTHIAUME: He had asked you
5 about this period 2000 to 2008, so do you
6 want to just explain maybe 2000 --

7 THE WITNESS: If I could maybe explain
8 how the whole telecom business came to be
9 from --

10 (BY MR. LEONE)

11 Q. Certainly.

12 A. Carlos and I were business partners in the
13 janitorial cleaning industry and he had come
14 to me one day, you know, saying that his wife
15 was spending \$400 a month on long-distance
16 services, you know, do I know of any ways to
17 call cheaper and the rest of the Brazilian
18 community was in the same boat. I had
19 searched on the internet and found a company
20 called WorldxChange that offered rates 50 to
21 70 percent less than they were experiencing
22 with big companies like AT&T and we were able
23 to save people a lot of money and this was an
24 agent program, WorldxChange. Within a few

1 months, Carlos had built a network of, you
2 know, thousands of people and thousands of
3 customers that were using this service and we
4 were growing like crazy and that went along
5 for a few years. That was like late-90s.
6 Eventually, they dropped their agent program
7 and we got involved with just plain customer
8 acquisition. We used a lot of television
9 advertising to -- we had a contract with TV
10 Global which is like ABC in Brazil for their
11 cable networks here in the U.S. and this
12 would -- it made the phone ring but it was
13 very expensive. We built up a customer base
14 and we rolled that customer base for quite a
15 while. We tried to get them to develop a
16 VoIP product for us. At that point in time,
17 in early 2000, we started to invest in our
18 own switches and that's where Brazilian Help
19 and Disk Avontade came to be. So slowly our
20 customer base would dwindle with the fixed
21 line product but our customers were using our
22 VoIP with Disk Avontade. It was doing very
23 well. That business grew and when we -- that
24 continued to grow all the way through 2012.

1 The agent business kind of just dwindled and
2 we stopped receiving income from that around
3 2008 or 9 and Disk Avontade was starting to
4 take off. In 2012, Carlos Wanzeler had a
5 friend that was very well known in the
6 network marketing business which was Carlos
7 Costa, came to us with the idea to marry this
8 advertising marketing program that he wanted
9 to develop to our existing 49.90 unlimited
10 plan and that's how Telexfree evolved.

11 Q. Okay. Well, that's certainly a lot of
12 information. So why don't we try to break it
13 down here.

14 A. Sure.

15 Q. We appreciate that.

16 A. Sure, sure.

17 Q. I believe you mentioned that WorldxChange was
18 able to provide telecom services at rates 50
19 to 70 percent lower?

20 A. Than standard At&T -- the existing
21 communication plans at the time.

22 Q. And how were they able to do that?

23 A. They didn't pay any money in advertising or
24 marketing. They used us to promote the

1 product by word of mouth. Customer
2 acquisition for them was outstanding. It
3 costs a lot of money to acquire a customer
4 using advertising.

5 Q. Could you describe the agent program that
6 WorldxChange used?

7 A. It was similar, a uni-level program.

8 Q. It was similar to what?

9 A. It's an MLM program. Again, it was a long
10 time ago, but they would offer certain
11 bonuses for certain -- when you acquire a
12 certain amount of customers and you were paid
13 -- we were paid down seven levels which was
14 very attractive. A level is, if I enroll you
15 as my agent, whatever customers you acquire,
16 you would be on my first level, I would an
17 override on that and so on so forth down
18 seven levels.

19 Q. And how many individuals did you bring into
20 the agent program?

21 A. Not many. I was there supporting Carlos and
22 helping him do his thing.

23 Q. How many agents did Carlos bring into the
24 agent program?

1 A. I have -- thousands. Well, you mean
2 directly? Because you're --

3 MR. BERTHIAUME: Are you talking
4 customers or --

5 THE WITNESS: Agents or customers?

6 (BY MR. LEONE)

7 Q. Through the agent program.

8 A. Right.

9 Q. How many individuals did Carlos Wanzeler
10 bring in?

11 MR. BERTHIAUME: As agents or
12 customers?

13 (BY MR. LEONE)

14 Q. Why don't we start with agents.

15 A. Okay. Agents, --

16 MR. BERTHIAUME: And just so it's
17 clear, we're talking 2000 to the present
18 under WorldxChange?

19 MR. LEONE: That's correct.

20 THE WITNESS: Tens of thousands, but
21 directly how it works, you bring in a
22 handful of leaders and they start to enroll
23 and they start to enroll and it builds,
24 especially in the Brazilian community, word

1 of mouth is worth a lot.

2 (BY MR. LEONE)

3 Q. How many customers did Carlos Wanzeler bring
4 in?

5 A. Tens of thousands and the retention of
6 customers even after the agent program, we
7 still had thousands of customers left over
8 even after the agent program ended.

9 Q. And why did the agent program end?

10 A. They decided to not run it anymore,
11 WorldxChange.

12 Q. Did they provide promoters with any reason
13 why they stopped running the program?

14 A. They didn't. They didn't have to. They had
15 a book of customers and they just said,
16 "Listen, just go out and get us more
17 customers." They actually had sold the
18 business at one point and I don't know if
19 that was before or after. They were bought
20 by a company called Xeris and I think the
21 agent program might have ended at that point.
22 Maybe it was because of the sale. I don't
23 know.

24 Q. Coming back to Disk Avontade --

1 MR. O'HARA: Anthony, could I just
2 jump in with a quick question?

3 MR. LEONE: Certainly.

4 (BY MR. O'HARA)

5 Q. You said that you supported James Merrill or
6 --

7 A. Carlos.

8 Q. Excuse me, Carlos Wanzeler with his
9 WorldxChange program. What do you mean when
10 you say you supported him?

11 A. Just helped him with the meetings and
12 whatever he would need to save him time so he
13 could spend more time talking to people,
14 create documents, not the official company
15 documents but for our agents, translations.

16 Q. And were compensated by WorldxChange for --

17 A. Yeah, how it works is, you know, they -- I
18 would be in his organization and he would
19 help me gather customers and agents.

20 Q. Okay. So you would also be --

21 A. Yes, I had an agent -- yes, I was paid
22 through the agent position.

23 Q. Okay.

24 A. And at one point in time, we created a

1 corporate position called Common Cents
2 Communications, okay? Common Cents
3 Communications was Steve Labriola an agent,
4 Carlos Wanzeler an agent, Fabio Wanzeler an
5 agent and myself and we build under that
6 position so that brought in a lot of income
7 for us.

8 Q. And when you listed those, Fabio Wanzeler,
9 correct --

10 A. Mm-hmm.

11 Q. -- Steve Labriola?

12 A. Correct.

13 Q. -- and Carlos Wanzeler as agents, are you
14 talking about agents of World --

15 A. WorldxChange, yes.

16 Q. Okay. Where did Common Cents fit in to
17 WorldxChange?

18 A. It was a position, what we call a corporate
19 position where work together and help build
20 underneath that position.

21 Q. Okay. Was Common Cents also considered an
22 agent of --

23 A. Yes.

24 Q. Okay.

1 (BY MR. LEONE)

2 Q. Could you just spell out Common Cents for the
3 record?

4 A. Yes. Sorry. I jumped the gun there. C-O-M-
5 M-O-N, C-E-N-T-S, S-E-N-S-E. (sic)

6 Q. Coming back to Disk Avontade again, do you
7 have an ownership interest in Disk Avontade
8 currently?

9 A. No. No, I do not.

10 Q. Have you ever had an ownership interest in
11 Disk Avontade?

12 A. No, just verbal promises from Carlos when --
13 profits we wouldn't share, but I -- we don't
14 receive any income from Disk Avontade. It
15 was money used to always build the network
16 for calling, the VoIP network, servers and
17 co-location costs and expenses. .

18 Q. Is there a website associated with Disk
19 Avontade?

20 A. There is.

21 Q. What is that website?

22 A. Diskavontade.com

23 Q. When was the website created?

24 A. Not sure.

1 Q. Do you know who created the website?

2 A. It was created from Brazil, the IT people in
3 Brazil.

4 Q. Is the website available in the United
5 States?

6 A. Yes.

7 Q. Is the website available in multiple
8 languages?

9 A. It actually only sells in the United States.

10 Q. Currently, how many employees does Disk
11 Avontade have?

12 A. I don't know.

13 (BY MR. NEELON)

14 Q. Does Disk Avontade mean something as --

15 A. Call Unlimited in Portugese.

16 (BY MR. LEONE)

17 Q. Has Disk Avontade had employees in the past?

18 A. Mm-hmm.

19 Q. What would be the high-water mark of
20 employees?

21 A. Three to four. I don't think very many.

22 Q. Does Disk Avontade have any employees
23 currently?

24 A. I don't think so. I think we kind of -- I

1 think Carlos just handles that. Oh, you know
2 what, I can't speak for him because maybe he
3 does have people in Brazil that work for him.

4 Q. The entity Brazilian Help you mentioned
5 earlier, correct?

6 A. (No verbal response.)

7 Q. The d/b/a Disk Avontade flows through
8 Brazilian Help, correct?

9 A. That's correct.

10 Q. Was Brazilian Help created specifically for
11 Disk Avontade operations?

12 A. Yes.

13 Q. Do you have an ownership interest in
14 Brazilian Help currently?

15 A. No, I do not.

16 Q. Have you ever had an ownership interest in
17 Brazilian Help?

18 A. No.

19 Q. Do you receive any salary through Brazilian
20 Help?

21 A. No, I do not.

22 Q. Have you ever received any salary through
23 Brazilian Help?

24 A. No.

1 Q. Does Brazilian Help have any employees
2 currently?

3 A. Shared duties maybe between -- I can't really
4 say.

5 Q. What do you mean by shared duties?

6 A. People that work for Telexfree may help
7 support Disk Avontade.

8 Q. Could you identify any of those individuals
9 who may have shared duties for Disk Avontade
10 and Telexfree?

11 A. Leo and I can't spell his last name for you,
12 unfortunately.

13 Q. Why don't you give us an attempt.

14 A. Can I look something up in my phone to see if
15 I can --

16 MR. BERTHIAUME: Just give it your
17 best --

18 (BY MR. LEONE)

19 Q. Just try.

20 A. C-A-P-U-L-S-A. I don't know. I call him
21 Leo. He's kind of new to the company.

22 Q. Okay. Are there any other individuals who
23 perform services for both?

24 A. I think Andrea Morrea I would believe would

1 do the books and Leo had done some sales and
2 that's all I really know.

3 Q. Starting with Leo, how long has he been
4 employed with Disk Avontade?

5 A. Less than a year.

6 MR. BERTHIAUME: Just to be clear, I
7 think what Mr. Merrill testified to is that
8 these individuals may be doing some shared
9 services. He didn't identify them
10 necessarily as employees.

11 THE WITNESS: Right. Their main duties
12 are Telexfree.

13 (BY MR. LEONE)

14 Q. Thank you. When you say that Andrea Morrea
15 does the books, what do you mean by that?

16 A. She's the bookkeeper.

17 MR. LEONE: Okay. Why don't we go off
18 the record and break for five minutes here.

19 THE WITNESS: Sure.

20 (Whereupon, the parties go off the
21 record.)

22 MR. O'HARA: We'll go back on the
23 record. The time is 11:40 a.m.

24 (BY MR. O'HARA)

1 Q. Mr. Merrill, I just have a couple of question
2 to start off. Going back to Telexfree's
3 current offices, I think it's at Suite 118 in
4 the office complex at 225 Cedar Hill Drive;
5 is that correct?

6 A. Cedar Hill Street.

7 Q. Cedar Hill Street, thank you. When did Telex
8 begin it's lease at Suite 118?

9 A. In December.

10 Q. December 2013?

11 A. Correct.

12 Q. And how many people are currently working in
13 its offices on a daily basis?

14 A. We have about 20.

15 Q. And can you go through who each person is and
16 what they do?

17 A. Okay. Andrea Morrea is the bookkeeper and I
18 may not have -- I won't have last names. If
19 I can use first names?

20 Q. Yes. I mean --

21 A. The last names are kind of tough.

22 Q. -- you can give it to us later if --

23 A. Yeah. Okay. In the accounting office is
24 Andrea Morrea and Ana-Paula and Patricia.

1 Steve Labriola is agent -- international
2 agent manager, myself. The CEO is Stewart
3 MacMillan. Joe Craft is in and out of the
4 office. He may be coming here on a permanent
5 basis but he just stays weeks at a time. Leo
6 is -- works with product development and
7 Allan Argo from Genius Trends works in that
8 office also. Dani Gose, G-O-S-E, a female.
9 It's actually I, D-A-N-I. She handles
10 customer service and in that office -- I mean
11 in the cubicles there is Renata, Camilla,
12 Raquel, Daniel, Enrique, Isabella and the
13 rest of them I can't recall names. Those are
14 the ones that have been with us the longest.
15 Gabrielle is the receptionist. And there are
16 three agents that I don't work directly with
17 and they just have to do with the new app,
18 customer service for the app program, but I
19 can get you those names.

20 Q. Okay, thanks. And what are they doing, these
21 three agents?

22 A. These three agents are strictly product
23 customer service.

24 Q. When you use the term agent, what do you

1 mean?

2 A. Customer service agents.

3 Q. Okay. Are they employees of Telexfree?

4 A. Yes.

5 Q. You just gave us a long list. Are these
6 individuals all employees of Telexfree?

7 A. Yes.

8 Q. And they're paid salary?

9 A. Yes. Allen is a subcontractor and Joe Craft
10 is paid as a subcontractor but he will soon
11 be salary.

12 Q. And all these salaried employees, are they
13 W-2 employees?

14 A. Yes.

15 Q. Do you happen to know what the salary range
16 is for these employees?

17 A. Usually \$12 to \$20 an hour.

18 Q. And is that range kind of for the entire list
19 you just gave us or --

20 A. Yeah. The higher end, you know, Andrea would
21 be one of our higher end people and Dani
22 would be on the higher end of that.

23 Everybody else would be between the 12 and 15

24 --

1 MR. BERTHIAUME: The individuals you
2 included were Stuart MacMillan, yourself--

3 THE WITNESS: Oh, I'm sorry. Yeah. I
4 mean, except for the executives.

5 (BY MR. O'HARA)

6 Q. Okay. Who are the executives, just for the
7 record.

8 A. Stuart, Joe Craft, myself, Steve Labriola.

9 Q. And the individuals that you said were, I
10 think you said they were in the cubicles,
11 what do they do?

12 A. Customer service mainly.

13 Q. Okay. Going back to a couple names you
14 mentioned when you were discussing Common
15 Cents, you mentioned someone named, I think
16 Fabio Wanzeler?

17 A. Yes.

18 Q. Can you tell us who he is?

19 A. He is Carlos' brother.

20 Q. Does he live in Massachusetts?

21 A. No, I believe he lives in Florida.

22 Q. And when he worked for Common Cents
23 Communications, did he conduct all of his
24 work out of Florida?

1 A. No, he was living in Massachusetts at that
2 time. We were all just independent agents
3 that worked together in that one position.

4 Q. Okay. And I think you mentioned it was
5 yourself, Carlos Wanzeler, Fabio Wanzeler and
6 then Steve Labriola --

7 A. Correct.

8 Q. -- that were Common Cents Communications?
9 Did you all work out of Massachusetts?

10 A. Yes.

11 Q. Can you tell us who Steve Labriola is?

12 A. Yeah, he has been a good friend of ours over
13 the years and he is a very good public
14 speaker and just a good person to have on
15 your team.

16 Q. When did you first meet Steve Labriola?

17 A. Steve and I were neighbors on Lincoln Street
18 when I lived in Hopkinton.

19 Q. So you've known him since the early 1990s,
20 fair to say?

21 A. Yes.

22 Q. And how did he come to join Common Cents
23 Communications?

24 A. He was involved with WorldxChange and us

1 together and we decided to band together to
2 try to build a good position in this network
3 marketing opportunity.

4 Q. Do you know how Steve Labriola became
5 involved in WorldxChange?

6 A. Yes, he was enrolled by us, Carlos, myself.

7 Q. Okay. Was he considered a recruit or part of
8 your level?

9 A. Yeah, he was an enrollee and I can't remember
10 who enrolled who at that time, but we kind of
11 all worked together.

12 Q. Can you describe for us Steve Labriola's
13 current position at Telexfree?

14 A. Yes, he handles all the agent concerns and he
15 -- we have conferences usually quite often
16 that he will speak at. He will get on calls
17 for the agents when they do their meetings by
18 phone. He is a very busy man.

19 (BY MR. LEONE)

20 Q. What do you mean when you say the agents do
21 their meetings by phone? What kind of
22 meeting?

23 A. You will have a conference call where people
24 will call in. We'll present a program or

1 we'll have a call of leaders that have
2 questions and he will try his best to answer
3 those questions.

4 (BY MR. O'HARA)

5 Q. What do you mean by, "Call of leaders"?

6 A. The bigger agents we have, the ones that
7 produce the most, our larger leaders are the
8 ones that produce more customers.

9 (BY MR. LEONE)

10 Q. Is Carlos Wanzeler an employee of Telexfree?

11 A. He's an owner.

12 Q. Does Carlos Wanzeler work out of the
13 Marlborough office?

14 A. He works out of there sometimes. Sometimes
15 he works out of his house.

16 Q. Does he work out of any other office
17 location?

18 A. Not that I know of, just there. If he
19 travels to Florida --

20 (BY MR. O'HARA)

21 Q. Is there a particular reason he would travel
22 to Florida?

23 A. He has a house in Florida.

24 Q. Where in Florida does he have a house?

1 A. In South Florida. I don't know exactly the
2 town.

3 (BY MR. LEONE)

4 Q. Have you ever been to his house in Florida?

5 A. I have. I have been once. It's near Fort
6 Lauderdale is all I can tell you. Everything
7 looks the same to me down there.

8 (BY MR. O'HARA)

9 Q. When were you there?

10 A. Last fall, I think. No, it would have been
11 closer to December. It would have been
12 closer to December.

13 Q. 2013?

14 A. Yes.

15 Q. Also, in your earlier testimony, you
16 referenced a person named Carlos Costa.

17 A. Mm-hmm.

18 Q. Can you tell us who he is?

19 A. He's basically our marketing guy. I mean,
20 he's the MLM guy who put this marketing
21 concept together and teamed it with our
22 telecom and is a great leader in Brazil.

23 Q. When did you first meet Carlos Costa?

24 A. Well, Carlos was a friend of Carlos Wanzeler,

1 so it would have been sometime in 2012.

2 Q. Do you know how long Carlos Wanzeler had
3 known Mr. Costa for?

4 A. I don't know. A lot longer than I, that's
5 all I know.

6 Q. And when you first met Carlos Costa, was it
7 in the context of Telexfree?

8 A. A meeting, you know, a meeting in Brazil.

9 Q. You met him at a meeting in Brazil?

10 A. Mm-hmm.

11 Q. And this was to conduct Telexfree business or
12 was it one of the other companies?

13 A. Telexfree.

14 Q. At that point, was Mr. Costa already a member
15 of Telexfree, LLC?

16 A. Yes.

17 Q. Is Carlos Costa still part of Telexfree?

18 A. He's one of the founders.

19 Q. He's no longer a member though, correct?

20 A. Officially he's not on the books for LLC or
21 Inc.

22 Q. What does he currently do for Telexfree?

23 A. He's still marketing.

24 Q. That's his primary job, marketing?

1 A. Right and developing the MLM program and
2 such.

3 Q. He's developing an MLM program?

4 A. He developed -- he helps us develop these
5 programs.

6 Q. Okay. What do you mean by, "These programs"?

7 A. Well, the program that was in the past and
8 the program that is present. He is in on the
9 decision making. He speaks no English, so
10 when I say I meet him, I don't speak to him
11 personally. I don't have any conversations,
12 just through Carlos if he is there.

13 (BY MR. LEONE)

14 Q. Have you ever met Mr. Costa when Carlos
15 Wanzeler was not there?

16 A. We don't talk, so I mean, he might have been
17 in the same room, but --

18 Q. Have you ever held a conversation with Carlos
19 Costa when Carlos Wanzeler was not there?

20 A. No, I don't think so. I don't believe so.

21 (BY MR. O'HARA)

22 Q. Has Mr. Costa ever been to the Telexfree
23 offices in Marlborough?

24 A. Mm-mmm.

1 Q. And has --

2 MR. BERTHIAUME: That's a no?

3 THE WITNESS: No, I'm sorry.

4 (BY MR. O'HARA)

5 Q. Has Mr. Costa ever been to the United States?

6 A. I don't know that.

7 (BY MR. LEONE)

8 Q. Changing gears a little bit, we've touched
9 upon this a little bit, but if you could give
10 me an overview of how Telexfree works
11 currently, that would be helpful.

12 A. The current program?

13 Q. The current program.

14 A. Okay. The current program is you join as an
15 associate, and again, the comp. plan is not
16 my area but I can give you a basic overview
17 of the program. You join for \$149 and what
18 that allows you to do is earn direct
19 commission on sales and to earn commissions
20 down five levels of your team if you can
21 enroll other associates or promoters in your
22 organization, okay? So that's an associate.
23 The goal -- our goal for our associates is to
24 help them to become promoters which is to

1 acquire ten customers. Anybody that is a
2 promoter -- I mean, anybody that has ten
3 customers, and that's one-time sales, now
4 you've officially received the rank of
5 becoming a promoter. This entitles you to
6 more commissions and compensation. The uni-
7 level which I'm most familiar with and is
8 easiest for me to explain, is again, when you
9 enroll other agents and whatever customers
10 they acquire, you get an override commission
11 on. So as an associate, you go down five
12 levels and you need two associates or
13 promoters to get to those five levels. To
14 achieve earnings on the sixth level and the
15 seventh level, you need to directly enroll
16 three promoters. To get to the seventh level
17 which is a higher percentage, you need four
18 directly enrolled, personally enrolled,
19 promoters. When you achieve -- you enroll
20 two promoters underneath you, they each have
21 ten customers and you are a promoter, you
22 maintain five monthly customers and your two
23 promoters, maintain five monthly reoccurring
24 customers, you're then entitled to an

1 Adsupport Bonus of \$100 a week and that's
2 only available to promoters who have reached
3 that ten customer level. You're also
4 entitled to a binary bonus, which, you now,
5 again, I defer to Carlos who is more -- you
6 know, the binary is hard for me to explain.
7 Basically when you enroll your first two
8 promoters, that qualifies you to earn binary
9 bonus of \$80 when two people cycle. And this
10 easier -- this is really hard to do verbally,
11 but when those two promoters enroll two other
12 promoters that also maintain that five
13 customers, those five customers, the next two
14 on your outside legs, when each cycles, when
15 you cycle meaning that they're on the same
16 level, then you earn the \$80 bonus and that
17 can go down to unlimited levels.

18 (BY MR. O'HARA)

19 Q. Can you explain to me what cycle means? I'm
20 not sure I understood.

21 A. Cycle means when one matches on the left to
22 the promoter on the -- okay, this is the
23 first -- and again, it's easier when you have
24 a diagram. If you're here and you've

1 enrolled two promoters and they have their
2 five -- two agents with their five customers,
3 that qualifies this gentleman to earning the
4 next cycle. The next cycle is when that --
5 these two promoters, when their two promoters
6 each get ten customers and five reoccurring
7 customers. It's like a tree. It's called a
8 binary tree and these two on the outside,
9 when they cycle, cycle when they're matching
10 the same level on the outside of your leg as
11 the -- on the right side of your leg as your
12 left side of your leg.

13 (BY MR. LEONE)

14 Q. Are there any other aspects of the current
15 program?

16 A. Team Builder. Okay, you're a promoter. You
17 have your ten customers. You have your five
18 reoccurring customers. When you recruit five
19 people that do that exact same thing, they
20 have their two promoters each with five
21 customers each every single month and as long
22 as they maintain that status, you earn a
23 percentage of overall sales of the company
24 that is split between however many people

1 achieve that Team Builder Bonus. You know,
2 if it's a couple, it could be a lot of money.
3 If it's a lot, it's all divided up amongst
4 that percentage. We have what we call the 1K
5 club and that is if within your first 30 days
6 you enroll four promoters, because that's our
7 goal, to get everybody with four promoters
8 that are maintaining five customers and have
9 achieved a level of ten customers, but
10 maintain five every single month, if you do
11 that in 30 days, you earn a Quick Start Bonus
12 of \$200, you earn a \$400 for your adsupport
13 -- and there is one important aspect of the
14 Adsupport if I can go back for a second. For
15 that bonus, you have to place ads every
16 single day in order to receive that as well
17 as achieving what we had talked about
18 earlier. So that's a very important piece of
19 this. It drives our Alexa Rankings through
20 the roof and what they advertise is the 60
21 minute free promotion. That's part of what
22 an agent receives. He has unlimited access
23 to these \$1, what we call the \$1, but it
24 depends -- you get a free trial that they

1 give out to their customers to try to entice
2 them to become regular customers, okay? So
3 back to the 1K club. So now you have four
4 directly enrolled promoters, okay? So you
5 receive the \$400 adsupport, you receive -- I
6 missed one thing, I'm sorry. There is a
7 direct bonus also. So each one of these guys
8 that becomes a promoter, you receive \$100
9 direct. You know when I said you didn't
10 qualify on those first two for they cycle?
11 Those guys pay out up direct \$100 for each
12 one that achieves that \$10 customer, those
13 ten customers.

14 Q. So that's for promoters even outside of the
15 1K club, correct?

16 A. Right. That's for anybody that enrolls --
17 you get a bonus of \$100 for a -- if you help
18 them achieve that goal of ten customers, you
19 get \$100.

20 Q. So assuming that the customer requirement is
21 met currently, if you, Mr. Merrill, brought
22 myself and Mr. O'Hara on, you would get \$100
23 for each of us?

24 A. If you reach your ten customer -- if you

1 achieve ten customers.

2 Q. Each?

3 A. Each, each one of you.

4 Q. So you would receive \$100 total or \$100 from
5 each promoter?

6 A. From each promoter.

7 Q. So \$200 total?

8 A. I would receive \$200 and that's why this 1K
9 Club kind of helps me -- refreshes my memory
10 of how the bonuses work. So not only -- if I
11 recruited the two of you or enrolled the two
12 of you, I would receive a Quick Start \$100
13 for the two of you, a Quick Start Bonus if
14 this is all within that 30 day period, okay?
15 So if we go back to the 1K club, we want to
16 -- you need to enroll four promoters that
17 each have ten customers, you would receive
18 \$200 in quick start money, you would receive
19 \$400 in adsupport if you qualify and do your
20 ads, and you would receive \$400 for each one
21 directly, so that's \$1,000. If you do this
22 all in a 30 -- and this is a promotion for 30
23 days, you receive an additional \$500. You
24 would receive \$1,500 total if you did that

1 within 30 days and this is a promotion that
2 is running through April 9th and it's all
3 based on hitting those customer levels.

4 (BY MR. O'HARA)

5 Q. And how long is this 1K club, that's 30 days

6 --

7 A. It's 30 days. It ends April 9th, I believe.

8 Q. Okay. So did this --

9 A. 1K will always be. It's the additional 500
10 because all those others are part of the
11 program, quick start, if it's all done within
12 30 days.

13 Q. So is the 1K club a new sort of program for
14 Telexfree?

15 A. It's, you know, it's recognition, it's
16 getting people going, getting people excited
17 and it's working pretty well right now.

18 Q. How many people have qualified?

19 A. I don't know those numbers because it's new.
20 I can find out.

21 Q. Okay. But it's going to be ending in --

22 A. It depends. We could continue it if it makes
23 financial sense and if we're getting the
24 customers we want out of it, it could

1 continue.

2 (BY MR. LEONE)

3 Q. How long has the current program been in
4 effect?

5 A. We launched it March 9th.

6 Q. And when you say you launched it, what do you
7 mean by that?

8 A. Well, it's been in the works for six months
9 but we actually -- when we got IT and
10 everything done, we launched it March 9th.

11 Q. How did you launch it?

12 A. That was at a conference in Boston. That was
13 simulcast around the world at the Copley
14 Marriot. That was our big kickoff.

15 Q. Did Telexfree use a different program prior
16 to March 9, 2014?

17 A. Yes.

18 Q. And could you describe that program as you
19 described the program that's been in effect
20 since March 9th?

21 A. Sure. In the prior program, you became what
22 we called a partner for \$50. That was the
23 only mandatory fee. To get started in the
24 business, you paid \$50 and what you could

1 earn was ten percent direct commission off of
2 Telexfree products, Telex 99. Then you had
3 the option to buy what we called Adcentral
4 which Adcentral was ten wholesale accounts
5 for \$289, okay, or ad family which was 50
6 accounts for 1,375, okay? When you bought
7 the packages, they come with a tool that you
8 go -- and everything for the family, for the
9 sake of clarity, is just five times the
10 amount. So you get five Adcentral tools for
11 the family and you get one for an Adcentral.
12 An Adcentral tool allows you to copy and
13 paste -- and this is still the advertising
14 mechanism that we use in the new program, is
15 that we have preconceived ads basically
16 saying, "Try our service 60 minutes free," or
17 whatever it says and you copy and paste it
18 into an online directory and our system
19 tracks and validates that that ad has been
20 placed, okay? So you do that every single
21 day and for an Adcentral, we reward our
22 agents one customer, one account, one
23 Telexfree account in their back office that
24 they can resell and when they resell that

1 countries unlimited but not only to land
2 lines but also to cell phones and most
3 people, especially -- the infrastructure for
4 land lines is not the same in the United
5 States as it is in these other countries.
6 There is many more mobile phones overseas, so
7 that's a huge thing for us.

8 Q. But my question is, how does the logistics of
9 a promoter joining Telexfree work?

10 A. Well, you can either have somebody come to
11 your house, go through a presentation and,
12 you know, explain to them the values of the
13 products and how they can earn from that and
14 then they can sign up -- everybody signs up
15 online. So you as a promoter or an associate
16 receive your own duplicated -- I'm sorry,
17 replicated website, which, you know, it would
18 be like, you know, Telexfree.com/Jim or Harry
19 or whatever your user name is, that's your
20 specific Telexfree website and that's how we
21 track who signs up as a customer under your
22 site and who signs up as an agent under your
23 site and everybody has that. You can promote
24 from, you know, having people come to your

1 site and say, "Try 60 minutes free," to try
2 to get them as a customer and if they're
3 interested in building a business, you would
4 have them run through the presentation on
5 your website. We also do -- I believe the
6 agents do their own calls to get people
7 excited about the program but they don't
8 actually sign up through these calls.

9 They'll kind of -- somebody like --

10 Q. Do you believe those calls happen or do you
11 know those calls happen?

12 A. I know those calls happen, but you still have
13 to come back to the site to sign up, go
14 through the terms and agreements and all of
15 that.

16 Q. And that sign-up process, has that always
17 been the process?

18 A. (No verbal response.)

19 MR. BERTHIAUME: Is that a yes?

20 (BY MR. LEONE)

21 Q. Is that a yes?

22 A. Yes, I'm sorry, yes.

23 Q. Does Telexfree have an associated website?

24 A. Telexfree.com

1 Q. So the business site for Telexfree is
2 Telexfree.com, correct?

3 A. The only place you can sign up for our
4 service as customer or an agent is
5 Telexfree.com forward slash what ever your
6 user -- replicated website is.

7 Q. Is there just a general Telexfree website?

8 A. Well, there is Telexfree.com, but you can't
9 sign up. You need to be sponsored by an
10 agent. You can't sign up under the company.
11 It's the same site.

12 Q. Outside of the sign-up process, there is a
13 separate Telexfree.com site; is that correct?

14 A. Yes.

15 Q. What is the address for that?

16 A. T-E-L-E-X-F-R-E-E.com.

17 Q. When was the Telexfree.com website created?

18 A. Well, it was created in Brazil so I don't
19 know exactly when and then it was translated
20 and I don't know exactly when that was
21 either.

22 Q. How do you know that it was created in
23 Brazil?

24 A. It was only in Portugese and we have IT

1 people in Brazil and we still do until this
2 day, unfortunately.

3 (BY MR. O'HARA)

4 Q. The IT people in Brazil, is that a company or
5 is that individuals that are employed by
6 Telex?

7 A. It was employees and then it was contracted
8 and now I believe it's employees again.

9 Q. When it was contracted, do you know --

10 A. No, I'm sorry, it's contracted now. It's
11 contracted now.

12 Q. Do you know the company that -- the
13 subcontractors that do the website?

14 A. I don't know. I really wasn't involved at
15 that point.

16 (BY MR. LEONE)

17 Q. Who created the website?

18 A. Costa and his team in Brazil.

19 Q. Originally the website was only in Portugese,
20 is it now in any other language?

21 A. Spanish and English.

22 Q. When was it translated to English?

23 A. I wish I could tell you. I don't know. It's
24 not even that good right now.

1 Q. Who drafted the content contained on the
2 Telexfree.com website?

3 A. Costa.

4 Q. And has that changed over time?

5 A. Yes, I'm sure it has but I don't know
6 exactly.

7 Q. So it's clear --

8 A. We've had different looks to that website.

9 Q. So the overall layout of the website has
10 changed over time?

11 A. I believe so, yeah.

12 Q. Has the content also changed over time?

13 A. I'm sure it -- you're supposed to change your
14 content on a regular basis.

15 Q. What do you mean by that?

16 A. Well, it helps in your SEO search rankings if
17 you change content more often. There is
18 different things they might add to it, but
19 overall nothing drastic. It might be about a
20 meeting coming up. It might be about some
21 news story.

22 Q. When you say they add to it, who are they?

23 A. The Brazil IT.

24 Q. How does the Brazil IT people get information

1 to put on the website?

2 A. From Costa or Wanzeler or --

3 Q. Does IT in Brazil speak English?

4 A. Some. I don't have much to do with the IT.

5 Certainly the guy who does the website does

6 not.

7 Q. Is Telexfree.com accessible to the public?

8 A. Yes.

9 Q. Is there also a non-public portion of
10 Telexfree.com?

11 A. Every agent has a back office and the back
12 office helps you manage your team, helps you
13 see who is in your organization, who is
14 producing, who is not and it allows you to
15 see commissions earned, manage your business.

16 Q. Have you ever visited Telexfree.com?

17 A. The front --

18 Q. The front web page?

19 A. Yeah, I've seen it.

20 MR. LEONE: I would like to introduce
21 a one-page exhibit from Telexfree.com with
22 the heading, "Founder."

23 (Whereupon, Exhibit 1, One-Page
24 Printout from Telexfree.Com, is marked for

1 identification.)

2 (BY MR. LEONE)

3 Q. Mr. Merrill, if you would take a moment to
4 review that.

5 A. I'm familiar with it.

6 Q. So have you had an opportunity to review the
7 exhibit?

8 A. Yes.

9 Q. I believe you testified that you're familiar
10 with it?

11 A. Mm-hmm.

12 Q. Have you seen it before?

13 A. Yes.

14 Q. And could you describe this screen shot?

15 A. Well, there is a picture of me standing in
16 front of our building. There is a picture of
17 me with people in a meeting, you know. This
18 is our conference room at Regis and there is
19 a picture of Rio de Janeiro in our office and
20 it also states that I graduated from
21 Westfield State which is not true and I tried
22 to get them to remove this from the website
23 to no avail.

24 Q. Okay. Let's back up for one minute here. Do

1 you see the Telexfree logo on this website
2 anywhere?

3 A. Yes.

4 Q. And is it in the upper lefthand corner?

5 A. Yes.

6 Q. And could you describe the logo?

7 A. It's the new logo with a -- it looks like a
8 wing in a circle, Telexfree and the Free
9 being capitalized.

10 Q. Is there any indication on this screen shot
11 as to who the website is attributed to?

12 MR. BERTHIAUME: Objection. What do
13 you mean by attributed to?

14 MR. LEONE: Certainly. I can --

15 (BY MR. LEONE)

16 Q. At the top of the page, do you see a section
17 that says, "Site by"?

18 A. Yes.

19 Q. And is there a word after that?

20 A. (No verbal response.)

21 Q. And what does that word say?

22 A. Telexfree.

23 Q. What does "Site by Telexfree," mean?

24 A. Well, normally, if it's site by, that's how

1 an agent will see, "Site by Jim," or
2 whatever. This is the main site.

3 Q. So this site would be -- when it says, "Site
4 by Telexfree," does that mean it's available
5 to the public?

6 A. Yes, I would say so.

7 Q. But it is not associated with a specific
8 promoter?

9 A. Not with a specific promoter. You know what,
10 I am not 100 percent sure that someone
11 doesn't have Telexfree/Telexfree. I don't
12 know that.

13 Q. So presumably someone could have the user
14 name Telexfree?

15 A. That's possible. You know, again, I'm not
16 IT, but I think that is possible. I don't
17 know.

18 Q. This website is in English, correct?

19 A. It is.

20 Q. At the bottom of the page, do you see the
21 copyright symbol?

22 A. Mm-hmm.

23 Q. Is that a yes?

24 A. Yes. I'm sorry, yes.

1 Q. Is there text following that symbol?

2 A. Yes, "Telexfree, Inc. 2014."

3 Q. Drawing your attention to the descriptive
4 paragraph starting, "Born in 1961," could you
5 read that first sentence?

6 A. "Son of a traditional American family -- Born
7 in 1961, son of a traditional American
8 family."

9 Q. And is that a period after family?

10 A. Period.

11 Q. Could you read the second sentence?

12 A. "James Merrill graduated in economics in the
13 class of 1985 at Westfield State University."

14 Q. And did you graduate in economics --

15 A. No, I did not.

16 Q. Regarding the third sentence, could you read
17 that sentence?

18 A. "A man of great vision, when he met some
19 Brazilians and found out what they were
20 paying to make phone calls in Brazil, he saw
21 a great market."

22 Q. And this is referring to you, correct?

23 A. Yes.

24 Q. Where did you meet, "Some Brazilians"?

1 A. Just Carlos and when we had created
2 WorldxChange. I've known many Brazilian
3 people.

4 Q. Anywhere else besides WorldxChange?

5 A. Well, it all started from -- well, it started
6 with Carlos first of all and our partnership
7 in the cleaning business and then which
8 evolved into WorldxChange.

9 Q. In that same sentence, what is meant by the
10 words, "Great market"?

11 A. I didn't write this. So I don't know who
12 wrote this and all I can tell you is I did
13 try to get them to change this several times,
14 but -

15 MR. BERTHIAUME: When you say, "Change
16 this" you mean the Westfield State or --

17 THE WITNESS: This whole -- yeah.

18 (BY MR. O'HARA)

19 Q. Who did you talk to about changing the
20 content of this page?

21 A. Wanzeler, our IT guy Jay Borrromei and they
22 said "We'll change this at a certain point"
23 and they just never did.

24 Q. When did you talk to Mr. Wanzeler about --

1 A. Oh, since it when it first when up. I said,
2 "You do not have to -- you don't need to say
3 this. It's incorrect."

4 Q. And then you mentioned a person named Jay?

5 A. Jay Borromei is someone we go to with -- if
6 we have -- in the United States we're trying
7 to bring IT from Brazil here. We have not
8 been able to take control of that. When I
9 have an issue, I go to Jay. I sent him -- I
10 sent this to Carlos Costa. I sent it to
11 Wanzeler, something that I rewrote and I
12 said, "This is okay to put on there" and it
13 never got changed.

14 (BY MR. LEONE)

15 Q. When did you make that request?

16 A. It would have been early on. Because first
17 of all, it's horribly written. It's
18 embarrassing.

19 Q. Could you just provide, if you could, a date
20 when you first noticed the errors here?

21 A. It would have been in -- probably in --
22 whenever this was uploaded and put into
23 English.

24 Q. Do you know when this was uploaded?

1 A. No.

2 Q. Do you know when this was put into English?

3 A. No.

4 Q. Do you know if changes have been made to the
5 website in the time period when you first
6 noticed this?

7 A. I'm sure other things have changed that were
8 more important to them.

9 Q. Who do you mean by them?

10 A. Brazil.

11 (BY MR. O'HARA)

12 Q. Is Jay located in the United States?

13 A. Yes.

14 Q. Does he work in the Telexfree headquarters?

15 A. He works -- he is a subcontractor. His
16 company is Opt 3 and he comes to the office.
17 He is there now as a matter of fact.

18 Q. Where is Opt 3, did you say?

19 A. Yes. California, the L.A. area.

20 Q. Okay. So they're a California IT company?

21 A. Right.

22 Q. Just another question about IT. I know we're
23 still talking about this exhibit, but just
24 from an IT prospective, if somebody comes to

1 join, they go to the specific page for the
2 promoter bringing them in?

3 A. Mm-hmm.

4 Q. I'm assuming they punch in information on
5 that page in order to sign up?

6 A. Yes.

7 Q. Is that information saved in a database?

8 A. Yes, I believe so.

9 Q. Is the physical equipment for that database
10 located in the United States?

11 A. It is located in the United States but it is
12 accessed through Brazil.

13 Q. Okay. It's accessed through Brazil?

14 A. Yeah.

15 Q. Okay. Do you know what company or maybe I
16 should say where that information is stored
17 in the United States, is that on the premises
18 of Telexfree's headquarters?

19 A. No, we're in Xand in Marlborough. It's a co-
20 location.

21 Q. When you say it's a co-location?

22 A. It's a co-location. It's a data center where
23 we hold all of our servers.

24 Q. And are those servers kind of maintained by a

1 third party?

2 A. Yeah, telecom is maintained by Logitel I'm
3 sorry, Ryan Mitchell of Telecom Logic and the
4 rest of it is really controlled out of
5 Brazil.

6 Q. Okay. So for --

7 A. If any changes go to the website, it has to
8 go to Brazil before -- I believe it goes into
9 a test environment, sent to Brazil and they
10 have to make the changes.

11 Q. Okay. I'm just trying to understand this
12 just for my own understanding or
13 simplification. I mean, is it fair to say
14 that, you know, the servers and the equipment
15 where the database is kept, is that
16 outsourced by Telexfree to a contracted
17 party, to another business?

18 A. It's on our servers but we are in the process
19 of bringing that database over to a third
20 party that's going to manage it in a more --
21 in a fashion that will be acceptable to us
22 and we can make changes more often and do the
23 things we kind of want to do.

24 Q. Okay. And where the servers are located in

1 Marlborough, are there Telexfree employees
2 onsite with those servers?

3 A. No, no. We would have to send somebody to
4 the location and we have 24-hour service with
5 them if something goes wrong. We can call
6 them and they can, you know, restart a server
7 or do whatever we need them to do.

8 Q. Does Telexfree own the servers at the
9 location?

10 A. Yes. It's kind of like you just rent space
11 in secure third-party environment that makes
12 sure that your equipment stays up and we
13 don't have problems.

14 Q. Okay.

15 (BY MR. LEONE)

16 Q. Going back to the first paragraph, there is a
17 sentence that begins, "Being well versed," do
18 you see that?

19 A. Yes, "Being well versed," would you like me
20 to read that?

21 Q. I would like you to read that sentence
22 please.

23 A. "Being well versed in one of the new
24 technologies in the era (VoIP) in 2002 he

1 decided to found Telexfree, Inc." That's
2 wrong.

3 Q. That sentence continues, correct?

4 A. "To serve this market."

5 Q. We've touched upon it, but what is your
6 understanding of VoIP; what does that stand
7 for?

8 A. Voice over internet protocol. It's the
9 ability to change voice into data, transform
10 it over the internet and reassemble it back
11 into voice on the other end using certain
12 codeces.

13 Q. What are codeces?

14 A. Software that makes into voice, I guess. I
15 really don't know.

16 Q. What is the difference between VoIP and a
17 regular telephone?

18 A. It can't be transferred over the internet.
19 It has to be a hard-wire call from end to
20 end, is my understanding. I've never been in
21 the telecom business but you take a land-line
22 phone and it doesn't touch the internet. It
23 goes through wires, I guess, and voice never
24 gets transferred into data, changed into

1 data, it just stays as voice.

2 (BY MR. O'HARA)

3 Q. And voice, you're talking about land-line
4 phone calls?

5 A. Right.

6 (BY MR. LEONE)

7 Q. All right. So moving forward, when we refer
8 to VoIP or V-O-I-P, we mean voice over
9 internet protocol.

10 A. Correct.

11 Q. Does Telexfree have any contracts with third
12 parties for the provision of VoIP services?

13 A. We have our -- contracts with our co-location
14 that house our servers and we have contracts
15 with third parties that take the call the
16 last -- what they call the last mile and that
17 goes to either a cell phone or a land line.
18 IDT, Liga Telecom, some of these contracts we
19 provided for you are terminating companies
20 and they take that call. They have contracts
21 with people all over the world that when it
22 hits their server in Siriname, it goes from
23 there to a cell tower and they charge us for
24 that minute of usage.

1 Q. Starting with the co-location contracts,
2 could you identify any of those businesses?

3 A. Xand.

4 Q. Could you spell that for the record?

5 A. X-A-N-D. When we first started with them,
6 they were Access Northeast and now they're
7 Xand.

8 Q. When did you first start with Access
9 Northeast?

10 A. I believe sometime in 2012. We had servers
11 in -- and I'm sorry, with Disk Avontade in
12 another co-location on Route 20 in
13 Marlborough, but I can't recall the name of
14 that. This was prior to Telexfree.

15 Q. So specifically with Telexfree, which co-
16 location service provides have you contracted
17 with?

18 A. Xand, but it could have been on the early
19 days, we could have been with this other
20 company on Route 20. I would have to verify
21 that.

22 (BY MR. O'HARA)

23 Q. And currently you're with Xand. How do you
24 spell that?

1 A. X, the letter X, A-N-D.

2 Q. And I think you testified earlier that you're
3 in the process of looking to move that
4 service or stop that service and out source?

5 A. We will still keep that there for our telecom
6 but we need to move our database to a more
7 friendly environment to what we're trying to
8 do and that company is called Exigo. We've
9 actually contracted with them already and
10 we're trying migrate our data. We've got
11 some problems with our data and we're trying
12 to migrate that over to Exigo.

13 Q. What kind of data is going to be transferred
14 to Exigo?

15 A. Data on the -- all of our -- what was
16 purchased, the billing information, the
17 genealogy information, all of that data.

18 Q. What is genealogy information?

19 A. Genealogy is your, you know, your
20 organization. You know, if you're the first
21 agent, and your tree of people that you've
22 enrolled or has enrolled in your team is part
23 of your genealogy.

24 Q. Okay. So kind of user or representative is

1 --

2 A. Representative information.

3 Q. -- going to be on that server or that
4 database?

5 A. Correct.

6 Q. And then what will the equipment at Xand be
7 used for going forward?

8 A. It could be used for ad verification. We
9 haven't really made final determination on
10 that. Ad verification, telecom, and we may
11 keep our website hosted there.

12 Q. If somebody is making a phone call through
13 the VoIP product that Telexfree sells, when
14 they use that to make a phone call, does
15 their kind of -- where they're making their
16 phone call from their computer or machine,
17 does that communicate with any of the servers
18 in Marlborough?

19 A. Yes.

20 Q. Okay. So every time a call is made, it has
21 to go through those servers?

22 A. Every time, every time it has to go there.

23 Q. Okay.

24 (BY MR LEONE)

1 Q. This web page here or this screen shot, this
2 isn't the back office, correct?

3 A. No, that's the front office.

4 Q. And if someone were to go to this website,
5 how would they get to this page?

6 A. I'm not really sure, under founder, I'm not
7 sure exactly.

8 Q. Okay.

9 MR. LEONE: I would like to collect
10 Exhibit 1.

11 MR. O'HARA: I just have one more
12 question.

13 (BY MR. O'HARA)

14 Q. Okay. You mentioned several times that the
15 information on your attendance at Westfield
16 State is incorrect?

17 A. It's incorrect.

18 Q. So you testified earlier that you were at
19 Westfield State until 1981, correct?

20 A. '79 to '81.

21 Q. Right and then in '86 or so you started your
22 company Cleaner Image?

23 A. Cleaner Image, correct.

24 Q. Right. So between 1981 and the start of

1 Cleaner Image, what was your employment
2 history at that point in time?

3 A. Different sales jobs, nothing that worked and
4 I took some more classes at a community
5 college that never really went anywhere
6 unfortunately.

7 Q. Did you stay in Massachusetts during that
8 period of time?

9 A. Yeah, I've always lived here.

10 Q. Sure. Okay.

11 MR. LEONE: All right. I would like
12 to collect Exhibit 1. The time is now
13 12:40. Whey don't we go off the record for
14 a minute.

15 (Whereupon, the parties go off the
16 record.)

17 MR. LEONE: The time is now 12:42.

18 We're now back on the record.

19 (BY MR. O'HARA)

20 Q. A couple of question circling back to a topic
21 we talked a little while ago. We discussed
22 how a promoter becomes an associate of
23 Telexfree.

24 A. How an associate becomes --

1 Q. How an individual become and associate.

2 That's actually what I would like to discuss.

3 A. Okay.

4 MR. BERTHIAUME: Under the current
5 plan?

6 MR. O'HARA: Under the current plan.

7 (BY MR. O'HARA)

8 Q. So under the current plan, take us through it
9 again how it happens. I know they go to a
10 website that's --

11 A. You enroll. A person explains the program to
12 you, an agent. You go fill out the form.
13 You pay \$149 and you would receive a website,
14 back office and front office website. The
15 front office helps market the plan. The back
16 office helps you manage your program and
17 you're off and running. You can start
18 selling right away the VoIP, Telexfree 99 and
19 you would earn ten percent direct commission
20 and you would earn down five levels, and I
21 don't know if I went that specific with you,
22 but I believe it's one percent down the first
23 four levels and one and a half on four -- I'm
24 sorry. One percent down four levels, on the

1 fifth level, it's a percentage and a half.

2 Q. Okay. So you said you fill out a form to
3 become an associate, right?

4 A. Mm-hmm.

5 Q. What does an individual have to fill out on
6 the form?

7 A. I'm not 100 percent, but name, address, tax
8 identification number, telephone number and
9 email address so we can contact them.

10 Q. And there is also a payment of \$150?

11 A. 149.90.

12 Q. 149, okay. In the plans we talked about, the
13 Adcentral, ad family, it was a \$50 fee to
14 become a member, right?

15 A. Right.

16 Q. Okay. So the new way to become an associate,
17 you pay \$150?

18 A. Right.

19 Q. And then how do you make that payment through
20 the website?

21 A. With a credit card. There are some options.
22 Our third-party vendor is I-Payout. So money
23 in, money out, we pay commissions through
24 them and we receive payments through them.

1 Q. Okay. But you can do all that through --

2 A. Yes.

3 Q. -- the website --

4 A. Correct.

5 Q. -- that your sponsor tells you to go to and
6 you make those decisions there?

7 A. Correct.

8 Q. And if you pay by credit card, the money gets
9 processed right through a Telexfree account,
10 correct?

11 A. Mm-hmm.

12 Q. Okay. Under the old plan as you described,
13 you paid the \$50 and then you had the option
14 to buy the Adcentral for I think you said --

15 A. 289.

16 Q. -- 289 and then the other one 1,375?

17 A. Correct.

18 Q. The new way, do you pay 150 and then have to
19 pay more to get packages to sell?

20 A. No, no. You just start selling to customers.
21 There is a \$19.90 monthly fee for management
22 of the website.

23 Q. Okay. And that fee, does Telex directly
24 charge a credit card associated with the rep

1 or --

2 A. They can pay in many different ways, but,
3 yeah, they can. That could be a reoccurring
4 charge.

5 Q. What are the other ways you can pay? Mail in
6 money or --

7 A. No, we don't accept mail in or anything like
8 that. Everything has to come through I-
9 Payout and I believe at this point in time,
10 we have an ACH option for agents.

11 Q. So you could just automatically transfer on a
12 monthly basis money from a checking account?

13 A. Yes, I believe so.

14 Q. What is I-Payout?

15 A. I-Payout is a payment system. They handle,
16 you know, any money that comes in goes
17 through their gateway so it helps us by --
18 they manage the money that comes into the
19 company and our commissions that get paid
20 out.

21 Q. But if you write a check -- or if you do the
22 ACH --

23 A. I don't think they can take a check. I
24 believe -- it's either we're in the process

1 or we have ACH option right now.

2 Q. Okay. But the ACH option doesn't go through
3 I-Payout?

4 A. Yes, it does.

5 Q. Oh, it does go through I-Payout?

6 A. Yes.

7 Q. So they handle all of the money that goes
8 into Telexfree?

9 A. Yes.

10 Q. Okay. And that's either through an ACH
11 transfer or through a credit card?

12 A. Yes.

13 Q. Okay. And then I think you also said you
14 fill out a form, you pay money and then you
15 get a front office and a back office; did I
16 get that right?

17 A. Yes.

18 Q. So what's the front office as opposed to the
19 back office?

20 A. It's more, you know, marketing side to show
21 people about the product. It's an
22 explanation of Telex 99 and --

23 (BY MR. LEONE)

24 Q. That's the front office?

1 A. Yeah. You sign up -- yeah, you can enroll
2 people through your front office. The back
3 office is just your management of your team
4 and your sales.

5 (BY MR. O'HARA)

6 Q. Is the front office the web page that each
7 agent is given or designated?

8 A. Mm-hmm.

9 Q. Okay. So that's --

10 MR. BERTHIAUME: Yes?

11 THE WITNESS: Yes.

12 (BY MR. O'HARA)

13 Q. -- the front office? So that's the front
14 office? It would be Telexfree.com/user name?

15 A. Jim or whatever.

16 Q. Okay. So that's that. And can someone like
17 -- I'll just use the term owner or whoever
18 that web page is assigned to, can they change
19 that web page in any way?

20 A. No, no, they cannot alter it.

21 Q. Okay. So everyone's front office looks
22 exactly the same?

23 A. Exactly.

24 (BY MR. LEONE)

1 Q. Does everyone's back office also look the
2 same?

3 A. Yes.

4 (BY MR. O'HARA)

5 Q. And then I guess we've gone through the
6 registration procedure, I guess since mid-
7 March, right?

8 A. Mm-hmm.

9 Q. Before that, did it work the same way?

10 A. Yes.

11 Q. So same thing, a representative of Telexfree
12 would have their own web page that somebody
13 would go through?

14 A. Right, exactly.

15 (BY MR. LEONE)

16 Q. And prior to March 9, 2014, did payment also
17 flow through I-Payout?

18 A. Yes. I believe they started with us sometime
19 in mid-2013, late --

20 Q. Do you believe they started with you in 2013
21 or did they start with you in 2013?

22 A. I believe they did. I'm not 100 percent sure
23 of exact dates.

24 Q. But they started with you in 2013?

1 A. Yes.

2 Q. Did Telexfree employ any other services
3 besides I-Payout prior to March 9th?

4 A. Prior to that, yes, we had an engagement with
5 a company called GPG.

6 Q. Any others?

7 A. No, prior to that point, we were trying to do
8 everything ourselves and it was not working
9 well so we needed somebody to help with this
10 process.

11 Q. And when you say you were trying to do it
12 yourselves beforehand --

13 A. Pay the agents and receive payments.

14 Q. And how would you have done that?

15 A. Many different ways. We would receive wires,
16 at some points checks, and it was an
17 administration nightmare.

18 Q. Wires and checks to where?

19 A. To our account.

20 Q. All right.

21 (BY MR. O'HARA)

22 Q. One more thing. This actually goes back to
23 when we were talking about the new way of
24 signing up. You talked about the bonuses.

1 So an associate to become a promoter has to
2 sell ten 99 Telexfree packages, correct?

3 A. Correct.

4 Q. Okay. And to get more commissions, at some
5 point you have to have five, I think you
6 called them continuous clients or --

7 A. Yes.

8 Q. -- monthly clients?

9 A. Reoccurring.

10 Q. Reoccurring clients. Is there some sort of
11 way to define what Telexfree considers a
12 reoccurring client?

13 A. Yeah, someone that it's not their first month
14 in usage of the service.

15 Q. Okay. So if you have five clients that have
16 all been -- the clients are two months, is it
17 at that point you get your commission?

18 A. Yeah, the second month they're considered a
19 reoccurring client.

20 Q. And that's the point where Telex pays out
21 their commission, whatever bonuses you may
22 have earned?

23 A. Right.

24 (BY MR. LEONE)

1 Q. For reoccurring clients, is each purchase of
2 the VoIP program distinct or is considered
3 one client as one purchase?

4 A. That's -- I'm sorry.

5 MR. BERTHIAUME: Objection.

6 THE WITNESS: I don't understand the
7 question.

8 (BY MR. LEONE)

9 Q. Certainly. So a client will sign up and
10 purchase a VoIP Program for 40.90, correct?

11 A. Right.

12 Q. A reoccurring client will purchase that
13 program every month, correct?

14 A. Correct.

15 Q. Is each month that a client purchases a 49.90
16 program a new client transaction?

17 A. No.

18 Q. Is it a new sale?

19 A. No, it's a reoccurring sale. I'm sorry.

20 (BY MR. O'HARA)

21 Q. Well, if have ten 99 Telexfree packages to
22 sell to -- I sign up and I'm an associate, I
23 have to sell to ten totally separate
24 individuals to be come a partner?

1 A. For that product, yes.

2 Q. So if I sell to five people and after two
3 months I've sold ten 99 Telex packages,
4 right?

5 A. Yeah, I would believe that would qualify you
6 as a promoter.

7 Q. Then you could be a promoter, too, that way.
8 Okay. That helps at least understand some
9 stuff.

10 MR. LEONE: I would like to introduce
11 a one-page exhibit. This is another screen
12 shot.

13 (Whereupon, Exhibit 2, One-Page
14 Printout from Telexfree.com, is marked for
15 identification.)

16 (BY MR. LEONE)

17 Q. Mr. Merrill, if you could take a moment to
18 review that.

19 A. Mm-hmm.

20 Q. Mr. Merrill, have you had an opportunity to
21 review this exhibit?

22 A. I have, yes.

23 Q. Do you recognize this exhibit?

24 A. I do.

1 Q. Have you seen it before?

2 A. I have.

3 Q. Could you describe it?

4 A. The first is a explanation of -- on the
5 banner, on the top page, is an explanation of
6 our Telex 99 product. There is a block here
7 for the presentation to download. There is a
8 Telexfree founder and there is block on the
9 right-hand corner that talks about a -- I
10 believe a presentation that was -- yeah, a
11 presentation, "Now is come the tool to
12 disseminate what you expected; recognition of
13 leaders, hotel Telexfree, testimonials," and
14 much, much more.

15 Q. Okay.

16 A. And then something about Gerry Nehra and our
17 legal department which was our first MLM
18 attorney and Telexfree, about the product
19 software.

20 Q. Thank you. Is this a screen shot of the
21 Telexfree website?

22 A. Yes.

23 Q. Who is this site by?

24 A. By Telexfree.

1 Q. Do you see the Telexfree logo on this page?

2 A. I do. It's the old logo.

3 Q. So you say it's the old logo; what do you
4 mean by that?

5 A. We have updated this logo.

6 Q. Why did you change the logo?

7 A. I'm not 100 percent sure, but I guess there
8 was some kind of conflict with another logo
9 when this was designed in Brazil.

10 Q. So Mr. Merrill, all of the questions that I'm
11 asking you, I want you to answer on an if-
12 you-know basis.

13 A. Okay.

14 Q. So do you know why the logo was changed?

15 A. I believe -- to my knowledge, there was some
16 problem with this conflicting with somebody
17 else's copyright of a logo or whatever you
18 call a logo.

19 Q. Do you know who that someone else was?

20 A. No, I do not.

21 Q. Do you see a copyright symbol in the lower
22 middle portion of this page?

23 A. Yes.

24 Q. And is there text following that symbol?

1 A. Yes.

2 Q. And could you read that text?

3 A. "Telexfree, Inc. 2012, all rights reserved."

4 Q. I believe you described it as a banner in the
5 middle of the page; do you see that?

6 A. Yes.

7 Q. That's a picture with the heading, "99
8 Telexfree," correct?

9 A. Correct.

10 Q. And what is that picture describing?

11 A. "With this plan you will speak much more with
12 a single payment monthly only U\$49.90. See
13 where will call and talk, all from your
14 mobile, via 0800."

15 Q. So that's what the text says. Are you
16 familiar with this product that seems to be
17 appearing -- there is a picture of a product
18 there?

19 A. A box, yes, I've seen it before.

20 Q. Does the VoIP program that Telexfree offers
21 come in a box?

22 A. No.

23 Q. How does it come to a promoter or a client?

24 A. It's online.

1 Q. Is it software?

2 A. It's software, correct.

3 (BY MR. O'HARA)

4 Q. The client gets a license to download it?

5 A. Correct and we also have most recently, we're
6 very excited about, we just got accepted from
7 Google and Iphone that our Telex App is now
8 available for anybody with a smart phone
9 which will change our business dramatically
10 adding a lot of customers, especially
11 overseas.

12 (BY MR. LEONE)

13 Q. Drawing your attention to the middle of the
14 page, do you recognize that individual there?

15 A. That's myself.

16 Q. And is there a header above your picture?

17 A. Telexfree founder.

18 Q. And is there text underneath the --

19 A. "Meet the founder and president of Telexfree
20 ads and technology, Mr. James Merrill."

21 Q. Did you write that text?

22 A. No.

23 Q. Who wrote that text?

24 A. Brazil.

1 Q. Is the header in the text underneath your
2 picture accurate?

3 A. I am not the founder, but I am one of the
4 three people that started Telexfree in the
5 U.S.

6 Q. Are you the president of Telexfree?

7 A. That's my title.

8 Q. Next to, for lack of a better word, that icon
9 Telexfree Founder, do you seen another icon
10 to the left?

11 A. Presentation.

12 Q. Could you describe that icon?

13 A. It says, "Presentation. See the presentation
14 and know the opportunity of your lifetime,
15 presented by President Mr. James Merrill."
16 There is a picture of a car, a house, a boat
17 and a download with an arrow.

18 Q. And are you aware of which presentation this
19 is referring to?

20 A. I am not, no.

21 Q. Do you know if that icon is something you can
22 click on and download a presentation?

23 A. I believe so.

24 Q. While keeping Exhibit 2 in front of you, I

1 would like to introduce a 17-Page exhibit
2 titled, "Advertise & Technology Business
3 Presentation."

4 (Whereupon, Exhibit 3, Telexfree
5 Business Presentation, is marked for
6 identification.)

7 (BY MR. LEONE)

8 Q. Mr. Merrill, if you could take an opportunity
9 to review this presentation.

10 A. (Witness viewing Exhibit 3.)

11 Q. Mr. Merrill, have you had an opportunity to
12 review this exhibit?

13 A. I have.

14 Q. Do you recognize this exhibit?

15 A. I do.

16 Q. Have you seen it before?

17 A. I have.

18 Q. And could you just generally describe the
19 exhibit.

20 A. It's a presentation. It's poorly done and it
21 shows how you -- somewhat how you get started
22 in the business.

23 Q. Okay. Who created this presentation?

24 A. I believe Carlos Costa.

1 Q. Do you believe it was Carlos Costa or was it
2 Carlos Costa?

3 A. I believe it was Carlos Costa. I can't say
4 100 percent sure, but I believe it was.

5 Q. So if you don't know, tell me you don't know.

6 A. I don't know.

7 Q. When was this presentation created?

8 A. I don't know.

9 Q. Have you used this presentation?

10 A. No.

11 Q. Have you presented this presentation in the
12 past?

13 A. No.

14 Q. Going back to Exhibit 2, --

15 A. Yes.

16 Q. -- where it says, "Presentation," I believe
17 you read that text earlier?

18 A. I did. I don't know why they put that in
19 there.

20 Q. The text reads, "Presented by President Mr.
21 James Merrill," correct?

22 A. Right.

23 Q. Going back to Exhibit 3, are you aware if
24 Telexfree promoters used this presentation?

1 A. I believe they have.

2 Q. You believe they have or you know they have?

3 A. I'm never involved with presentations, but I
4 believe they use this presentation to present
5 the program.

6 (BY MR. O'HARA)

7 Q. Why do you think that?

8 A. Because it's on the site, I would imagine.

9 Q. This presentation is on the Telexfree
10 website?

11 A. Yeah.

12 Q. Okay. Going back to Exhibit 2 here, if I
13 were to put my curser over this image and I
14 click on it, would I get this presentation?

15 MR. BERTHIAUME: Do you know?

16 THE WITNESS: I don't know.

17 (BY MR. O'HARA)

18 Q. Is there any other presentations that were on
19 the Telex website at any time that were
20 different from this presentation in front of
21 you right now, Exhibit 3?

22 A. I don't know.

23 (BY MR. LEONE)

24 Q. On Exhibit 2, towards the lower part of the

1 page, there is header in the gray area that
2 says, "Presentation," do you see that?

3 A. Yes.

4 Q. And underneath it it says, "See
5 presentation," correct?

6 A. Yes.

7 Q. Do you know if this presentation --

8 A. I never clicked on it, so I don't know.

9 Q. Going back to Exhibit 3, sorry to keep on
10 switching back and forth, on Page 1 of the
11 presentation, do you recognize any of the
12 individuals in that picture?

13 A. No.

14 Q. Do you know where that picture came from?

15 A. No, I don't.

16 Q. The name Telexfree also appears on Page 1,
17 correct?

18 A. Yes.

19 Q. And next to the name Telexfree there is
20 superscript text TM, correct?

21 A. Yes.

22 Q. Do you know what the superscript TM stands
23 for?

24 A. Trademark.

1 Q. Who filed for Telexfree trademark protection?

2 A. I have no idea.

3 Q. Do you know when Telexfree filed for
4 trademark protection?

5 A. No.

6 (BY MR. O'HARA)

7 Q. Do you know who would know that?

8 A. I don't know who would do that, no. Am I
9 allowed to ask a question?

10 (BY MR. LEONE)

11 Q. No, sir. We control the record. At the end,
12 your counsel will be given an opportunity to
13 --

14 A. Okay.

15 Q. Flipping to Page 2 of the presentation, there
16 is a picture, correct?

17 A. Mm-hmm.

18 Q. And who is that picture of?

19 A. Myself.

20 Q. And is there text next to the picture?

21 A. "Founder, president of Telexfree, Mr. James
22 Merrill."

23 Q. Do you happen to know where that picture was
24 taken?

1 A. In front of, our building.

2 Q. When you say your building --

3 A. Well, where we lease space.

4 (BY MR. O'HARA)

5 Q. The smaller picture on the bottom right of

6 this page, there is a building there?

7 A. Yes.

8 Q. Do you recognize that building?

9 A. That's the building, yeah, it's just another
10 angle. This is down below. This is from the
11 side.

12 Q. Okay. And this is the building where
13 Telexfree's office suite is located, right?

14 A. Correct.

15 Q. That's 225 Cedar Hill Street?

16 A. Correct. Our office is the first floor, if
17 you look at the central door of the smaller
18 picture, all of that corner to the right.

19 (BY MR. LEONE)

20 Q. So for clarity of the record, that would be
21 seven windows there?

22 A. That's correct.

23 Q. If you could turn your attention to Page 3.

24 Page 3 has the heading, "Digital publicity,"

1 correct?

2 A. Correct.

3 Q. Could you describe this page?

4 A. It's showing information -- I can read it,
5 "In terms of share of the advertising market
6 --"

7 Q. No, I would prefer if you could just describe
8 it at this point.

9 A. Right. It's showing different statistics
10 regarding internet advertising and marketing.

11 Q. There are two dates listed above that
12 paragraph, correct?

13 A. Mm-hmm.

14 Q. What are those dates?

15 A. "April 18, 2012 updated on April 20, 2012 at
16 6:50 p.m."

17 Q. And there is also a pie graph, correct?

18 A. Correct.

19 Q. And is there any description of the pie
20 graph?

21 A. (No verbal response.)

22 Q. Let me rephrase. Does the pie graph come
23 with any legend or key?

24 A. No.

1 Q. Could you describe the pie graph?

2 A. It's a circle with, it looks like two-thirds
3 filled and then segments, seven segments,
4 filling one-third of the graph and then one
5 segment filling two-thirds.

6 Q. Is there information listed on slide 3?

7 A. There is, I'm just not sure how it relates.

8 Q. Where does this information come from?

9 A. I have no idea.

10 Q. Do you know if this information is accurate?

11 A. I don't.

12 Q. Mr. Merrill, could you please turn to Page 4
13 of the presentation and could you read the
14 heading?

15 A. "Two ways of revenue: Prepare to know the
16 best."

17 Q. And there is text in the center of the page,
18 correct?

19 A. Mm-hmm.

20 Q. And what does that text say?

21 A. "Work over the internet posting ads daily.
22 Two ways of revenue: Individual earnings,"
23 and, "Group Earnings."

24 Q. And is the text, "Posting ads daily,"

1 referencing Telexfree's ad program?

2 A. I believe it is.

3 Q. You believe it is or you know it is?

4 A. I believe that's what they're referencing
5 here.

6 Q. What's your understanding of the word, "Ads"?

7 A. Our classified ads that they post into the
8 directories, the agents.

9 Q. Prior to March 9, 2014, how would promoters
10 go about posting ads?

11 A. Same way. They would go into their back
12 office, copy one of the pre-made ads saying,
13 "Try our service free for 60 minutes," or
14 whatever it says, and then they would paste
15 it into a online directory. Our system would
16 validate that that ad would be placed and
17 that would be what they would have to do that
18 day and they would have to do that seven days
19 a week.

20 Q. Who writes the advertisements?

21 A. I am not sure who wrote the advertisements,
22 the classified advertisements, I'm not sure.

23 Q. Did you write the advertisements?

24 A. No.

1 Q. Can promoters write their own advertisements?

2 A. No. It's all whatever is in the back office
3 there.

4 (BY MR. O'HARA)

5 Q. Is there any staff at Telexfree dedicated to
6 advertising?

7 A. I believe everything came from Brazil.

8 Q. Okay.

9 (By MR. LEONE)

10 Q. You mentioned an online directory. What does
11 that mean?

12 A. Just places like Craigslist that they can
13 post these ads and, you know, get some
14 exposure for the company.

15 Q. So do the promoters post the ads?

16 A. Yeah, the agents, right, the associates.

17 Q. How are the sites determined?

18 MR. BERTHIAUME: How are the sites
19 determined by the promoters or how --

20 THE WITNESS: How do we -- because in
21 the back office we have classified ads and
22 then we have a -- links to different
23 directories and I'm not sure who puts those
24 in there or where they came from.

1 (BY MR. O'HARA)

2 Q. How many links to directories are part of
3 this back office?

4 A. I don't know.

5 Q. When you say directory, does that mean --
6 like you used the example Craigslist.

7 A. Something like that. It could be in Brazil.
8 It could be any -- there is thousands of
9 those directories around.

10 Q. So they select from one of a thousand
11 different directories?

12 A. From -- we provide a link in their back
13 office.

14 Q. Yes, exactly.

15 A. But we don't have thousands in there. I'm
16 not really sure how many we have.

17 Q. Okay. There is not thousands, okay.

18 A. No, no.

19 Q. Can a rep choose any one of those links to --

20 A. It's up to him what ad, what directory.

21 Q. Is there any reason why one directory would
22 be preferred over another by a rep?

23 A. If they're having success, I guess. One rep
24 talks to another and says, "Hey, try this

1 site. I'm having success." I don't know.

2 Q. So if a rep chooses a directory, posts an ad
3 and what do you mean by have success?

4 A. If it gets customers, you know, someone to
5 try the service for 60 minutes.

6 Q. Okay. So the ad that the rep posts, if
7 somebody sees that ad and --

8 A. It would track back to their site. They
9 would get credit.

10 Q. Okay, it tracks back.

11 A. It would link back to their specific
12 Telexfree/Fred website.

13 Q. So a rep could get a customer and never
14 really meet that customer?

15 A. He could.

16 Q. Just by virtue of the ad?

17 A. Right. That is the hope.

18 Q. Okay.

19 (BY MR. LEONE)

20 Q. Can agents or representatives post
21 advertisements anywhere else besides the
22 internet?

23 A. Oh, you mean, like -- you're talking about
24 like in a newspaper or --

1 Q. Sure, in a newspaper.

2 A. They're not supposed to without getting
3 approval from us if they're going to do
4 anything outside of what we have available to
5 them. So the answer is they're not supposed
6 to.

7 Q. Have any agents or representatives approached
8 Telexfree to get permission to post in an
9 medium other than the internet?

10 A. I'm not aware of that. Steve may be aware.

11 (BY MR. O'HARA)

12 Q. Who would they go to to get permission from
13 Telexfree?

14 A. Probably Steve.

15 Q. He is authorized to approve --

16 A. No, he would bring it to us or to Carlos or
17 to myself or Costa to see if it was okay, but
18 obviously if it's English, he wouldn't bring
19 it to Costa.

20 Q. So it would be you or Carlos that would have
21 the final say on --

22 A. If there was an advertisement that an agent
23 requested to do.

24 Q. Okay. And has such a --

1 A. Not as far as I'm aware.

2 Q. Okay. Nothing has come across your desk for
3 that kind of matter?

4 A. No.

5 Q. And you're not aware of anything going across
6 Carlos' --

7 A. No, I'm not aware.

8 (BY MR. LEONE)

9 Q. Sticking with Page 4, is there a heading
10 below the text that we just read?

11 A. "Individual Earnings."

12 Q. So the slide --

13 A. Or two -- I'm sorry.

14 Q. So the slide does contain a heading,
15 "Individual earnings," correct?

16 A. "Individual Earnings," and, "Group Earnings"
17 to the right.

18 Q. Is there a picture under the "Individual
19 Earnings"?

20 A. Yes.

21 Q. And could you describe that picture

22 A. It's a woman holding money.

23 Q. Do you know that woman?

24 A. No.

1 Q. What type of money?

2 MR. BERTHIAUME: The type of money?

3 (BY MR. LEONE)

4 Q. Can you describe the money that is in the
5 picture?

6 A. It looks like a \$20 bills.

7 Q. Is it just one \$20 bill?

8 A. One, two, three, four, five.

9 Q. And I believe you were starting that there is
10 another heading, correct?

11 A. "Group Earnings."

12 Q. And is there a picture below that heading?

13 A. Mm-hmm.

14 Q. Could you describe that picture?

15 A. There is a bunch of heads in a circle
16 meeting, kind of like a football huddle, one,
17 two, three, four, five, six, seven.

18 Q. Do you know any of those individuals?

19 A. No, I do not.

20 Q. I would like to turn to Page 5, please. Is
21 there a heading on this page?

22 A. "Individual Earnings."

23 Q. Is there a picture under the heading,
24 "Individual Earnings"?

1 A. It's the exact same picture as in Page 4, a
2 woman holding five \$20 bills.

3 Q. And is there also text on this page?

4 A. Yes. "Ads on the Internet! The promoter
5 must post ads everyday, (Monday, Tuesday,
6 Wednesday, Thursday, Friday, Saturday,
7 Sunday.)"

8 Q. And that's what you were describing as seven
9 days a week?

10 A. Correct.

11 Q. And is there text below that?

12 A. "We have it all computerized, with only three
13 steps, in your virtual office (BackOffice)"

14 Q. And what does the word computerized mean, "We
15 have it all computerized"?

16 A. I think what they're meaning is online.

17 Q. It also references three steps, correct?

18 A. Right.

19 Q. Could you describe those three steps?

20 A. I believe what they mean is --

21 Q. Mr. Merrill --

22 A. I'm sorry.

23 Q. -- not whether you believe. Do you know or
24 not what the three steps are?

1 MR. BERTHIAUME: What the person who
2 drafted this intended that to mean?

3 (BY MR. LEONE)

4 Q. Do you have any understanding --

5 A. I would say no, I don't know the exact three
6 steps.

7 Q. What is your understanding of the steps it
8 takes to post an advertisement?

9 A. I'm thinking that you copy the ad, you go to
10 the directory, you paste the ad and then the
11 link -- it's linked and then you verify the
12 ad, I think. I've never done it.

13 Q. So you've never posted an ad?

14 A. No.

15 (BY MR. O'HARA)

16 Q. Do you know how long it might take to go
17 through those steps?

18 A. I do not know.

19 Q. Can a rep, instead of copy and pasting and
20 ad, can they type their own ad and then put
21 that into --

22 A. No.

23 Q. Okay.

24 A. We wanted to make sure that they couldn't put

1 something bad in there.

2 (BY MR. LEONE)

3 Q. What language are the ads in?

4 A. Spanish, English and Portugese.

5 Q. Is that something that the promoter will
6 select or is it random?

7 A. If you choose English as your website, you're
8 supposed to see your ads in English. If you
9 choose Spanish, you're supposed to see your
10 ads in Spanish.

11 Q. Is there a description of two options on Page
12 5?

13 A. Right, yes.

14 Q. What are those options?

15 A. "Adcentral, Adcentral Family"

16 Q. The term Adcentral, is this referring to what
17 we discussed earlier?

18 A. Correct, yes.

19 Q. And the words "Adcentral Family" used here,
20 is that referring to what you were describing
21 earlier?

22 A. Yes.

23 Q. If you could turn to Slide 8. I believe it
24 has the heading, "Individual Earnings."

1 A. Okay.

2 Q. And a picture of a woman in a chair.

3 A. Okay, got it.

4 Q. What is Slide 8 describing?

5 A. The software and the product.

6 Q. Below the picture of the woman in the chair,
7 is there text?

8 A. "And also use our central access in many
9 cities of the world."

10 Q. What do the words, "Central access" mean?

11 A. It's a phone number that you can dial
12 directly to access our server. So it allows
13 you to call from another country. If you're
14 calling from your cell phone, you're just
15 making a local call to that access number and
16 then you hit our server and then you can
17 connect to another country.

18 (BY MR. O'HARA)

19 Q. So you can make a phone call without having
20 your computer there to --

21 A. Absolutely.

22 (BY MR. LEONE)

23 Q. If you could turn one page to Slide 9. It
24 appears to have the heading "Group Earnings,"

1 and, "Build your Group." It should be the
2 page right after.

3 A. Okay.

4 Q. Could you describe this slide?

5 A. It says, "Group Earnings. Build your Group,"
6 with the same pictures of a group in a type
7 of football huddle and an equals sign and a
8 picture of that same woman holding the five
9 \$20 bills and below that, "Earn Much More."

10 Q. And if we could again, and if the
11 presentation helps to describe it even
12 fuller, could you walk me through the group
13 earnings that a promoter could earn prior to
14 March 9, 2014?

15 A. Okay. The individual in the group earnings
16 on the next slide shows that --

17 MR. BERTHIAUME: So for the record,
18 this would be the tenth page or slide that
19 you're referring to?

20 THE WITNESS: Right. This is the
21 direct bonus. You earn \$20 direct for each
22 new promoter. "In this example, U.S. \$40.
23 To have the right of receiving cycles, in
24 binary, and residual up to the 6th level

1 (for the ads.) The promoter must be
2 qualified, through the following way 2
3 direct promoters, being 1 one on the left
4 (A) and 1 on the right (B) plus one account
5 for personal use in your username."

6 (BY MR. LEONE)

7 Q. So if we used you, Mr. Merrill, as the top
8 individual and we used myself and Mr. O'Hara
9 as A and B, you would receive \$20 from myself
10 and \$20 from Mr. O'Hara; is that correct?

11 A. When you purchased an Adcentral and I
12 acquired a customer.

13 Q. And could you be your own customer?

14 A. I could be my own customer.

15 Q. Does the presentation discuss any other group
16 earnings, not necessarily on this page?

17 A. Yes, and it says, "And residuals up to six
18 levels (for the ads)."

19 Q. And what is that residual it's discussing?

20 A. I believe that's the two percent down six --
21 that is the two percent down six levels. If
22 that product sells, you earn two percent of
23 that sales down six levels.

24 Q. And that's two percent of the product sales?

1 A. Of the product sales.

2 (BY MR. O'HARA)

3 Q. Does this picture, just so I'm clear, is this
4 representing a binary earning or is this --

5 A. That's what it's describing so I think it's
6 -- yes.

7 Q. Okay. So you're saying this is describing
8 how the binary --

9 MR. BERTHIAUME: Actually, the next -

10 THE WITNESS: Well, this is actually
11 describing how the -- it says, "Receiving
12 cycles" but this looks like the direct to
13 me.

14 (BY MR. O'HARA)

15 Q. Okay, yes. I just see the term "In binary,"
16 and I'm not clear, but I know you didn't
17 write it.

18 A. Binary is two by two all the way down.

19 (BY MR. LEONE)

20 Q. So does this Slide 10 represent how you
21 qualify for the binary?

22 A. I think it's supposed to.

23 Q. You think it's supposed to or it does?

24 A. It's supposed to. I can't judge for whoever

1 wrote this, so --

2 Q. Okay. So turning forward to Page 11, could
3 you describe the binary to us?

4 A. You have a gentleman, "You" and he has
5 enrolled a promoter on the left and a
6 promoter on the right and it says, "A and B
7 are your qualifiers." So you don't earn
8 binary on those. You do earn direct, but you
9 don't earn binary.

10 MR. BERTHIAUME: Just to be clear, the
11 prior slide, that's showing the direct.

12 THE WITNESS: Okay, okay. Sorry,
13 you're correct.

14 MR. BERTHIAUME: So if you just want
15 to explain the two slides to --

16 THE WITNESS: Right. The first slide
17 is showing the direct bonus, which I
18 thought it was and this is showing how you
19 qualify. So you don't earn a cycle on
20 these and when then next gentleman down on
21 the left-hand side --

22 MR. BERTHIAUME: This is now the 11th
23 slide that you're referring to?

24 THE WITNESS: 11th slide, "Group

1 Earnings Binary." Okay. These next two
2 gentleman if qualified would trigger a
3 binary cycle. It says, "Earn US \$20 per
4 cycle each time you register one Adcentral
5 on your left and one Adcentral on your
6 right, doesn't matter if they are direct,
7 indirect or gotten by transfer. Maximum
8 daily income for this earning: 22 ciclos,"
9 which is cycles in Portugese, or, "\$440.
10 Leftovers remain for the following day."

11 (BY MR. LEONE)

12 Q. So Page 10 of this presentation and Page 11
13 are referring to what somebody can make when
14 they purchase an Adcentral, correct?

15 A. When they purchase the wholesale accounts,
16 correct.

17 Q. So the Adcentral would operate the same way
18 but there would be different dollar amounts
19 attributed, correct?

20 MR. BERTHIAUME: You mean the
21 Adcentral Family?

22 MR. LEONE: If I didn't say that,
23 that's what I meant.

24 THE WITNESS: Yes. It would be -- it's

1 five times -- this would be twenty. Well,
2 for the cycle's sake, I think this
3 gentleman would have to buy more
4 Adcentrals. I think he would only earn
5 \$20.

6 (BY MR. O'HARA)

7 Q. And for the direct registration bonus on Page
8 10, is it?

9 A. Mm-hmm.

10 Q. It gives you kind of a formula and brief
11 summary of it, "One on the left, one on the
12 right plus one account for personal use in
13 your username."

14 A. Right.

15 Q. For the binary, is there that requirement for
16 one account for personal use in your
17 username?

18 A. The binary, you cannot earn binary without a
19 customer. You need to earn binary - you need
20 to have a customer to earn the binary.

21 Q. Okay. So the guy at the to that says, "You"
22 here, he would need to have one customer in
23 order to start earning the binary as it goes
24 down --

1 A. Correct.

2 Q. -- the chain or the tree? Okay. Once again,
3 that customer could be him if he wanted to
4 use the 99 Telex?

5 A. It could be, correct.

6 (BY MR. LEONE)

7 Q. In terms of the binary structure, could an
8 individual create multiple user names to
9 satisfy A and B or is this done on an
10 individual basis, the binary?

11 A. You're supposed to be on an individual basis.
12 Yeah, you're not supposed to create multiple
13 positions.

14 Q. But could you?

15 A. I believe so.

16 Q. You believe so or you know so?

17 A. If someone puts in an incorrect tax number,
18 they could do this. I can't tell you I know
19 exact cases of that, but I believe it
20 happens. It's happened.

21 Q. So a tax id number is used when an agent
22 signs up; is that correct?

23 A. Correct.

24 Q. Where does that tax id number, that

1 Q. Thanks. So is it fair to say that the
2 username that's going to be generated by
3 Telex for the buyer of the Adcentral, is that
4 linked to their tax id?

5 A. I'm not sure how that works.

6 Q. So you don't know what particular information
7 a user id is linked to?

8 A. No.

9 Q. Okay. Do you know if Telexfree has some sort
10 of automated program or mechanism that, you
11 know, flags in the database where a username
12 or if --

13 A. I don't believe so, but I think we will.

14 (BY MR. LEONE)

15 Q. Does this presentation reference any other
16 group earnings?

17 A. This is the additional, which again --

18 Q. This is Page 12?

19 A. I'm sorry, yes. So I believe what this
20 references, if you have an Adcentral on your
21 left and your right and they buy three more
22 Adcentrals, that you would receive a \$60
23 bonus if they did that, but I would like to
24 defer to Carlos on this because I've always

1 information, where does that go? Who reviews
2 that?

3 A. It goes into our database.

4 Q. And is that database held on one of your
5 servers?

6 A. Yes.

7 Q. Prior to March 9, 2014, did any employee
8 review the information that was being input
9 into the database?

10 A. I do not know, but I don't believe so.

11 Q. After March 9, 2014, is anyone reviewing
12 information that's going into the database?

13 A. I don't believe so.

14 Q. You don't know?

15 A. I don't know.

16 (BY MR. O'HARA)

17 Q. Mr. Merrill, from what I heard from your
18 testimony, it sounds like the tax id is the
19 identifier for the participant or the buyer
20 of the Adcentral?

21 A. (No verbal response.)

22 MR. BERTHIAUME: Is that a yes?

23 THE WITNESS: Yes.

24 (BY MR. O'HARA)

1 had a hard time understanding this one.

2 (BY MR. O'HARA)

3 Q. Carlos Wanzeler or Carlos Costa?

4 A. Carlos Wanzeler.

5 Q. Thank you.

6 (BY MR. LEONE)

7 Q. Okay. Page 13.

8 A. Okay. This I understand guys. This is group
9 earnings and this is the direct and indirect
10 earnings. It's ten percent per customer,
11 that's your direct customer and then down
12 five levels you earn two percent -- in the
13 old plan you earn two percent of your group
14 down to the fifth level.

15 MR. BERTHIAUME: Do you want to
16 explain what the percentage is of, a
17 percentage of what?

18 THE WITNESS: A percentage of sales.

19 MR. BERTHIAUME: To customer?

20 THE WITNESS: Customer sales.

21 (BY MR. LEONE)

22 Q. Prior to March 9, 2014, does it matter if a
23 promoter sold one of the original ten
24 wholesale packages, assuming Adcentral for a

1 moment, or one of the ones they're receiving
2 from the advertisements?

3 A. No, they would earn the same. They would
4 earn -- on the first month, this is second
5 month, this is reoccurring, first month,
6 44.90 as a bonus for acquiring a customer.

7 Q. Okay. Page 14.

8 (BY MR. O'HARA)

9 Q. Actually, I just have a question on this one.
10 So I understand I think the first line where
11 there is a hash, I guess that's you in the --

12 A. Voce.

13 Q. Yes, were it says, "Voce." I'm guessing this
14 is Portuguese.

15 A. It is.

16 Q. So I'm assuming if that person at the top,
17 say it's me, sells a 99 Telex package, I get
18 a ten percent commission?

19 A. Correct, every single month.

20 Q. Every single month, right. So when I get to
21 the level one, I mean, I understand there is
22 a two percent commission if somebody in my
23 lower level sells, but where does that five
24 number come in?

1 A. This is assuming that they have five
2 customers. Oh, I'm sorry, this is assuming
3 that you have five agents on your first
4 level.

5 Q. And it's assuming that they're each selling
6 something in a given month or whatever?

7 A. Right.

8 Q. Why does it assume I have five?

9 A. Well, it's just an example. It's a
10 hypothetical example.

11 Q. Okay. So I could have two there?

12 A. Yes, absolutely. I mean, these never -- this
13 is just to show how the program works. It
14 never works this way exactly and it's just an
15 example.

16 (BY MR. LEONE)

17 Q. So this presentation would be used by
18 promoters to show how the program worked?

19 A. Mm-hmm.

20 Q. Is that a yes?

21 A. Yes.

22 (BY MR. O'HARA)

23 Q. Okay. So if you get down to like the bottom
24 level, Level 5 or whatever, I'm assuming

1 Niveis means level, right?

2 A. Mm-hmm.

3 Q. So that figure right to the right of five,
4 3125, that's assuming 3,125 99 Telex packages
5 are being sold at that point?

6 A. I would assume that's correct.

7 Q. Okay. That's your understanding of what the
8 chart is conveying?

9 A. Yes.

10 Q. Okay. Thank you.

11 (BY MR. LEONE)

12 Q. Moving forward, Mr. Merrill, to Page 14 --

13 A. Okay. And again, I would like to defer to
14 Carlos on this one, but from what I
15 understand, how I understand this part of it
16 works, when you receive an account from doing
17 your ads every week, when you resell it, you
18 would earn two percent of that. If the agent
19 does not sell the product that it comes --
20 they can sell the account -- after a certain
21 amount of time, they can sell that customer
22 back to the company for \$20.

23 MR. BERTHIAUME: The account?

24 THE WITNESS: The account, in the past.

1 (BY MR. O'HARA)

2 Q. What level of time would that have been?

3 A. I believe it's 15 days. Again, I'm not 100
4 percent sure on the time line. I believe
5 it's after 15 days.

6 (BY MR. LEONE)

7 Q. Would that be listed in the contract that an
8 agent is signing?

9 A. It may.

10 (BY MR. O'HARA)

11 Q. But is that your understanding of how it
12 customarily worked in the past?

13 A. That's how it worked and it is a promotion,
14 so it could be stopped. We just changed the
15 program instead of doing that.

16 Q. Okay. But that's how it worked from the
17 inception of Telexfree until a certain recent
18 point?

19 A. Right.

20 Q. March --

21 A. 9th.

22 Q. And would that process of buying back be
23 automated in some way by Telexfree's --

24 A. It's not automated. They have to -- and I'm

1 not sure how this is done again in the back
2 office, but they would have to sell it back
3 to the company.

4 Q. So the rep --

5 A. Our incentive is by giving them \$44.90 per
6 every customer sold that they would sell it,
7 but if they didn't, they would receive \$20
8 back by selling that customer back to the
9 company.

10 Q. Okay. But it's initiated by the Telex agent
11 whether to sell back or not?

12 A. Mm-hmm.

13 Q. Okay. And they do that through the back
14 office?

15 A. Correct.

16 Q. And just so I'm clear, too, you mentioned a
17 commission or something of 44.90 to sell it
18 to somebody; isn't that just for the first
19 sale?

20 A. That's the first month. That's the bonus for
21 selling that customer the first month.

22 Q. So that's one, customer, they're going to
23 find a new customer --

24 A. Every time you sell that account, you would

1 earn 44.90 the first month. We give that
2 bonus when they do their advertisement, when
3 they receive that account. When they resell
4 it, they get 44.90.

5 MR. BERTHIAUME: If I may, and then
6 the following month that same customer --

7 THE WITNESS: It reverts back to the
8 ten percent.

9 (BY MR. O'HARA)

10 Q. For reoccurring accounts, after that first
11 month, you get --

12 A. It goes back to the ten percent every month
13 thereafter.

14 Q. Okay. So every time I identify a new
15 individual that would like to buy the 99
16 Telexfree, I get a 90 percent commission on
17 the initial sale?

18 A. Correct.

19 MR. BERTHIAUME: Time out. I'm not
20 sure you're saying the same thing.

21 THE WITNESS: Okay.

22 (BY MR. O'HARA)

23 Q. I can rephrase it. I'll use you and Mr.
24 Berthiaume as an example. I sell one 99

1 Telex to you that first month, correct to say
2 I get a 90 percent commission on that sale?

3 A. That's correct.

4 Q. And then if --

5 MR. BERTHIAUME: First sale of the
6 Telexfree 99 --

7 THE WITNESS: -- 99 account, the 44.90.

8 MR. BERTHIAUME: What does he get?

9 THE WITNESS: The customer pays 49.90
10 and the agent that sold that customer
11 receives 44.90.

12 MR. BERTHIAUME: The next month, you
13 buy --

14 THE WITNESS: I get \$5, ten percent of
15 that 49.90.

16 (BY MR. O'HARA)

17 Q. Yes, I get that. So then the next part of
18 the question is, when I come to you, do I get
19 90 percent commission on a sale to Mr.
20 Berthiaume?

21 A. No, no.

22 Q. So it's just one time --

23 A. It's a customer acquisition type bonus.

24 Q. Just for one customer, the first customer?

1 A. The first month for --

2 (BY MR. LEONE)

3 Q. For the initial customer?

4 A. Right.

5 MR. BERTHIAUME: The initial purchase
6 per customer. So in other words, if I
7 become a new customer, right, you've got
8 now two new customers. You sell to me as a
9 new customer, first month 44.90, every
10 month --

11 MR. O'HARA: Yes, that's what I was
12 getting at.

13 MR. BERTHIAUME: Every month thereafter
14 that I buy, it's ten percent.

15 MR. LEONE: Tim, why don't we try one
16 more time.

17 MR. BERTHIAUME: I'm just trying to
18 make sure that you understand.

19 MR. O'HARA: That's exactly what I'm
20 getting at.

21 (BY MR. O'HARA)

22 Q. Is Mr. Berthiaume's explanation your
23 understanding?

24 A. Yes. If any customer that comes from an

1 Adcentral, from doing their advertisement and
2 I sell them, I will receive 44.90 the first
3 month and every month thereafter, I will get
4 ten percent.

5 Q. Okay. I'm clear on that. Thank you for the
6 explanation.

7 (BY MR. LEONE)

8 Q. Turning to Page 15, what is being described
9 here?

10 A. The amount of cycles, "Everyone who reaches
11 22 ciclos of Adcentral for 20 days," ciclos
12 is cycles.

13 Q. Right. If you could just describe if this is
14 a separate type of earning.

15 A. No. It's just saying, you know, this is --
16 if you hit 22 cycles for 20 days within the
17 same month, individuals or a group will
18 receive one percent of the business volume of
19 the company as extra bonus. It will be
20 divided equally among them. It's kind of
21 like the Team Builder. I can tell you that
22 no one has hit this.

23 Q. Does this bonus have a name?

24 A. I don't believe -- I don't know.

1 Q. Flipping to Page 16, what is being described
2 on this page?

3 A. This is the Team Builder Bonus and if I am
4 the person under you and I am an Adfamily, I
5 purchased an Adfamily, and I have five
6 customers and I enroll, ten people underneath
7 me that have five customers each, I become a
8 team builder and I would receive two percent
9 of the revenue of the monthly net sales of
10 the company divided equally among the team
11 builders.

12 Q. Has anybody hit this bonus?

13 A. The Team Builder, yes. I can't tell you
14 exactly how many or how often, but people
15 have done this.

16 Q. Is there a maximum that people can receive
17 from the Team Builder?

18 A. It says, 39,600.

19 Q. Do you know?

20 A. That's what it says, 39,600, so I assume
21 that's it.

22 Q. Just so we're clear, do you personally know
23 if there is a maximum that an individual can
24 make off of the Team Builder Bonus?

1 A. Yes, 39,600.

2 Q. Turning to the final page of the
3 presentation, Page 17, could you describe
4 that page?

5 A. "End of the presentation, beginning of your
6 future." There is some people behind a, it
7 looks like a cruise ship, a family drinking
8 wine, a home, some -- I believe this is
9 Brazilian Real, but I can't say for sure. It
10 just states, "Do not waste time. Sign up now
11 and become part of Telexfree."

12 Q. Is there a picture of a man on that --

13 A. There is a picture of a man lying down with a
14 tie sideways.

15 Q. We may have touched upon this, but is this
16 presentation available on the Telexfree
17 website currently?

18 A. I --

19 Q. Either you know or you don't.

20 A. I don't know. It's not supposed to be.

21 Q. Are you aware whether or not this
22 presentation is available in the back office
23 currently?

24 A. I don't know.

1 Q. Do you know if this presentation was ever
2 available in a different language?

3 A. Yes, in Spanish and English. I'm sorry,
4 Spanish, English and Portugese.

5 (BY Mr. O'HARA)

6 Q. Actually, Mr. Merrill, if you could turn back
7 to Page 6 of this presentation. It's the
8 page that says, "Individual Earnings, Your
9 Adcentral (1 ad per day)." Let me know when
10 you get there.

11 A. Okay.

12 Q. So we've gone through the presentation, I
13 think. You know, here, the heading, at least
14 one of the headings is, "Individual
15 Earnings"?

16 A. Yes.

17 Q. And I suppose this is referring to the
18 Adcentral plan; is that correct?

19 A. Correct.

20 Q. Okay. Can you tell us what's being conveyed
21 in this individual earnings?

22 A. What's supposed to be conveyed but is in
23 Portugese is annual contract and it's
24 incorrect, it's supposed to be 289. Your

1 main Adcentral, when you sell the product for
2 44.90 --

3 MR. BERTHIAUME: 49.90.

4 THE WITNESS: I'm sorry, 49.90, you
5 would receive, I believe that means monthly
6 gain, which is 199.60 times 12 months would
7 be 2,594 minus what the wholesale cost was
8 for the total of 2,295.80.

9 (BY MR. O'HARA)

10 Q. Okay. So looking then at these numbers,
11 where is the commission factored in on this
12 slide to the, I guess, earnings of someone
13 who is selling the 99 Telexfree accounts
14 under the Adcentral program?

15 MR. BERTHIAUME: Objection. I'm not
16 following.

17 (BY MR. O'HARA)

18 Q. Okay. Well, we have the first line, right,
19 and you said this number is wrong, it's
20 supposed to be \$289, right?

21 A. Right.

22 Q. And then it says, I think that means weekly
23 earnings, "Ganho Semanal" is that fair?

24 A. Yes.

1 Q. What do you interpret that number to mean?

2 A. But that's not correct either.

3 Q. Okay.

4 A. That's supposed to be 44.90.

5 Q. Okay. How do you make a weekly earning of
6 44.90 under the Adcentral?

7 A. Because when you advertise seven days a week
8 and you receive this account and you resell
9 it, you make 44.90.

10 Q. 44.90, assuming that's a new customer that
11 you've identified?

12 A. Right.

13 Q. But then it says, what I think is monthly
14 earnings, "Ganho Mensal" and that's just
15 49.90 times five, correct, I think roughly.

16 A. Can I use a calculator?

17 MR. BERTHIAUME: No. It's all based
18 on -- these numbers --

19 THE WITNESS: I think that's supposed
20 to say --

21 (BY MR. O'HARA)

22 Q. By four, but --

23 MR. BERTHIAUME: No, I'm talking about
24 the first number.

1 THE WITNESS: The first number is
2 wrong.

3 (BY MR. O'HARA)

4 Q. Okay. So that number is wrong. I guess what
5 I'm - I mean, it says monthly earnings.
6 Somehow you earn almost \$200, right?

7 A. Mm-hmm.

8 Q. How do you do that under the Adcentral
9 package?

10 A. You receive the account and you sell it and
11 when it sells, you make 44.90.

12 Q. Okay. You do that four times?

13 A. Yeah, four times.

14 Q. So it's assuming you sell four packages?

15 A. Correct.

16 Q. Okay.

17 MR. LEONE: At this point I would like
18 to collect Exhibit 2 and Exhibit 3.

19 MR. BABENER: May I make a note before
20 you collect the exhibits?

21 MR. LEONE: You made a note on there?

22 MR. BABENER: I was going to make a
23 note to you, just a clarification, if I
24 could, regarding your remark regarding the

1 trademark?

2 MR. LEONE: Certainly at the end,
3 counsel, we'll give you an opportunity to
4 address it.

5 MR. BERTHIAUME: Do you want to take a
6 break now?

7 MR. O'HARA: I just have a question on
8 Exhibit 2. It will be brief.

9 MR. LEONE: Why don't we reintroduce
10 Exhibit 2 for a brief period of time.

11 (BY MR. O'HARA)

12 Q. In the middle there is the picture of the
13 Telexfree founder, under that there is
14 another picture, it says, "Legal Department,
15 Telexfree" under that in the text, if I'm
16 reading correctly, it says, "Telexfree is
17 proud to announce we've retained Gerald Nehra
18 as our legal staff." Is Gerald Nehra still
19 part of Telexfree legal staff?

20 A. Yes.

21 Q. Thank you.

22 MR. LEONE: And I would like to
23 collect Exhibit 2. The time is 1:55. Why
24 don't we go off the record.

1 (Whereupon, the parties go off the
2 record.)

3 MR. LEONE: The time is now 2:50. We
4 are now back on the record. I would like
5 to introduce a two-page exhibit with the
6 title Telexfree on it.

7 (Whereupon, Exhibit 4, Two Page
8 Printout from Telexfree.com, is marked for
9 identification.)

10 (BY MR. LEONE)

11 Q. Mr. Merrill, if you could please take a
12 moment to review that exhibit.

13 A. Okay.

14 MR. BERTHIAUME: Are you all set?

15 THE WITNESS: Yes, I'm sorry.

16 (BY MR. LEONE)

17 Q. Mr. Merrill, have you had an opportunity to
18 review this exhibit?

19 A. I have.

20 Q. Do you recognize this exhibit?

21 A. Yes.

22 Q. Have you seen it before?

23 A. I have.

24 Q. And could you describe this exhibit,

1 generally?

2 A. It's the back office.

3 Q. And by the back office, you mean the
4 Telexfree back office?

5 A. Telexfree back office, correct.

6 Q. Do you see Telexfree's logo in the back
7 office?

8 A. Yes.

9 Q. And could you describe where you see that?

10 A. Top left-hand corner.

11 Q. And is that the new logo or the old logo?

12 A. That is the new logo.

13 Q. In the screen shot of the back office, do you
14 see a copyright symbol in the lower middle of
15 the page?

16 A. Yes, I do.

17 Q. And is there text following that symbol?

18 A. "Telexfree, Inc. 2013. All right reserved."

19 Q. Thank you. What is the Telexfree back
20 office?

21 A. It's where our agents manage their businesses
22 from.

23 Q. And how is the back office used to manage
24 business?

1 A. They place their advertisements from the back
2 office, they can view reports, see their
3 organization, see a presentation, see their
4 money, what they've earned, customers,
5 agents, stock.

6 Q. And how do they see all of those things that
7 you mentioned?

8 A. The tree would show them their organization.

9 Q. And when you say the tree --

10 A. I'm sorry, the icon with the tree, where it
11 says "Tree" and there are three blocks above
12 it, like an organization. Advertise in the
13 top left-hand corner, presentation below it,
14 your data, I'm not sure what that is,
15 reports, news, my Adcentral, statement would
16 be their income, I would assume. I have not
17 clicked through to any of these in an agent's
18 -- I've just seen this overview.

19 Q. Has the back office always looked as it
20 appears here?

21 A. I'm not sure of that, no.

22 Q. Who created the back office?

23 A. This was created in Brazil.

24 Q. In Brazil by whom?

1 A. The Brazilian IT people.

2 Q. Does Telexfree have a contract with those
3 people?

4 A. I'm not sure exactly how that -- how they're
5 paid. So I don't know. If there is a
6 contract, I'm not aware. I didn't sign a
7 contract and was not aware of that.

8 Q. Does Telexfree pay this, for lack of a better
9 word, IT company in Brazil?

10 A. I'm not sure how that works, to be honest
11 with you.

12 Q. Well, not how it works, but does Telexfree
13 pay an IT company in Brazil to create the
14 back office?

15 A. We must. I'm not aware of how that's done or
16 -- my contact with IT is through Jay Borromei
17 and Jay contacts Brazil if we need something.

18 Q. Is this back office used for U.S. operations?

19 A. Yes.

20 Q. And again, who uses the back office?

21 A. Agents.

22 Q. What do you mean by agents?

23 A. Associates, promoters.

24 Q. And is that the same both prior to March 9,

1 2014 and post?

2 A. Yes.

3 Q. How would an agent access the back office?

4 A. They have to log in through -- there is a log
5 in on the front office to get into your back
6 office.

7 Q. What information do they use to log in?

8 A. User id and password.

9 Q. Do they go to the general Telexfree free
10 website to put their login and password or do
11 they go to their individual website?

12 A. They go to their individual website.

13 Q. Could an agent go to the general Telexfree
14 website and put in their username and id?

15 A. I can guess but I'm not sure. I don't know.

16 Q. Does your name appear anywhere in the back
17 office?

18 A. Not that I'm aware.

19 Q. Has it ever appeared in the back office?

20 A. I'm not sure. I'm not in this very often.

21 Q. So you don't know?

22 A. No, I do not know.

23 Q. So the back office contains a number of
24 icons, correct?

1 A. Mm-hmm.

2 Q. And can an agent click on each one of those
3 icons?

4 A. I believe so.

5 Q. Do you know if those icons when clicked lead
6 to something else?

7 A. They must. I don't think they would be here
8 unless they did.

9 Q. You've mentioned a number of different icons.
10 Can I draw your attention to the icon in the
11 third row, second column. Do you see that
12 icon?

13 A. I do.

14 Q. Could you describe that icon?

15 A. It says, "Best Western, Telexfree Tijuca."

16 Q. Is there a logo on that icon?

17 A. Yes, Best Western logo.

18 Q. What is that logo?

19 A. Best Western Hotels.

20 Q. Why is that icon in the back office?

21 A. I couldn't tell you. I can tell you that an
22 investment was made in a hotel through the
23 corporation in Brazil not through Telexfree
24 or Telex, Inc. and that investment was to

1 bring credibility to -- you know, to show
2 that we're partnering with a big company like
3 Best Western or to give us some credibility
4 because of this investment that the company
5 made in Brazil.

6 Q. How do you know an investment was made in
7 Brazil?

8 A. I've seen a contract between Ympactus and
9 Best Western.

10 Q. What is Ympactus?

11 A. And it was in another language so we Google
12 translated it and that's the best I can see
13 of that. Ympactus is the Brazilian
14 Corporation.

15 Q. Did you ever ask Carlos Wanzeler about the
16 translation?

17 A. No, no. He just told me that it was
18 something that they wanted to do to bring
19 some credibility to the company -- to their
20 corporation in Brazil.

21 Q. That they wanted to do, correct?

22 A. Right.

23 Q. So were you ever consulted before this was
24 done?

1 MR. BERTHIAUME: Before what was done?

2 (BY MR. LEONE)

3 Q. Before this investment was made? Let me
4 start over. Were you ever consulted before
5 this investment in a Best Western was made?

6 A. I wasn't involved in this purchase if that
7 answers your question.

8 Q. Who is associated with Ympactus?

9 A. Carlos Costa, Carlos Wanzeler. In 2012, I
10 did go down and sign to be 20 percent partner
11 in Ympactus but I was not involved in this
12 decision.

13 (BY MR. O'HARA)

14 Q. Are you currently a 20 percent partner in
15 Ympactus?

16 A. Yes, as of December 12, 2012.

17 Q. In Brazil, is Ympactus organized as an
18 incorporated entity?

19 A. It's called an S.A., but I can't tell you
20 exactly what that is. That's all I know.

21 Q. Is Ympactus an affiliate of Telexfree?

22 A. Ympactus was at one point contracted with
23 Telexfree to build a network marketing
24 business in Brazil. That contract ended.

1 Q. Okay. Do you know when the contract ended?

2 A. I do not.

3 Q. In that contract, did Ympactus have -- what
4 were they building, a network that Telexfree
5 would use in Brazil?

6 A. They were to build a network marketing
7 business in Brazil.

8 Q. Would that business sell the 99 Telexfree
9 package?

10 A. Yes.

11 Q. Okay. And did they use the name Telexfree in
12 their marketing?

13 A. They did.

14 (BY MR. LEONE)

15 Q. Do you know when this investment was made in
16 the Best Western?

17 A. No.

18 MR. BERTHIAUME: The Ympactus, is that
19 what you're talking about?

20 (BY MR. LEONE)

21 Q. Did you not understand my question?

22 A. I did. I don't know when Ympactus invested
23 in this hotel.

24 Q. Would this Best Western logo and icon be in

1 everyone's back office, or in all agents, I'm
2 sorry?

3 A. If it's in one, it's in them all, I believe.

4 Q. Keeping this Exhibit in front of you, I would
5 like to introduce a one-page exhibit
6 containing a screen shot.

7 (Whereupon, Exhibit 5, One-Page
8 Printout from Telexfree.com Website, is
9 marked for identification.)

10 MR. BERTHIAUME: That's 5?

11 MR. LEONE: Yes, Exhibit 5.

12 (BY MR. LEONE)

13 Q. And Mr. Merrill, if you could take a chance
14 to review that, please.

15 A. Yes.

16 Q. Mr. Merrill, have you had an opportunity to
17 review this exhibit?

18 A. I have.

19 Q. Do you recognize this exhibit?

20 A. I do.

21 Q. Have you seen it before?

22 A. I've seen it on the website, the banner.

23 Q. And you may have partially done this, but can
24 you generally describe this exhibit?

1 A. It's a banner of a Best Western Hotel and
2 underneath it it says, "Hotel Best Western
3 opportunity."

4 Q. Is this an accurate representation of the
5 Telexfree website?

6 A. It would be, yes.

7 Q. Would Exhibit 5, this screen shot, would this
8 page of the website be accessible to the
9 public?

10 A. It would be.

11 Q. So it wasn't part of the back office,
12 correct?

13 A. No, it's not.

14 Q. Do you see the Telexfree logo on this page?

15 A. I do. It is the older logo.

16 Q. And is there also a section titled, "Site
17 by"?

18 A. Yes, it says Telexfree.

19 Q. And do you see a copyright symbol in the
20 lower middle portion of the page?

21 A. I do.

22 Q. And is there text after that symbol?

23 A. Yes.

24 Q. What does that text read?

1 A. "Telexfree, Inc. 2013. All rights reserved."

2 Q. Just to the right of that there is another
3 icon and text, correct?

4 A. To the --

5 Q. To the right of the copyright.

6 A. Okay, yes.

7 Q. Do you see that?

8 A. Yes.

9 Q. And it says, "US Dollar," right?

10 A. Yes.

11 Q. What does that mean?

12 A. I don't know. And it says -- I know R\$2.00
13 usually refers to a Real, Brazilian money,
14 but I don't know why that's there.

15 Q. Could you describe the picture in the center,
16 the larger picture in the center of this
17 screen shot?

18 A. The Best Western picture in the banner?

19 Q. So is it your testimony you see a Best
20 Western in the center banner?

21 A. Yes.

22 Q. And what is Best Western?

23 A. It is a hotel.

24 Q. And could you describe that picture that

1 appears?

2 A. It's a picture of the Best Western sign and
3 it says, "Refrigerator in every room," below
4 it and there is a telephone pole to the left
5 of the hotel.

6 Q. And is there an icon in the middle of that
7 picture?

8 A. The Best Western logo.

9 Q. Is there an icon in front of the Best Western
10 logo?

11 A. Oh, a play button.

12 Q. Why is a picture of a Best Western on the
13 Telexfree website?

14 A. I can't say for sure but I'm assuming they
15 want to bring credibility to the name
16 Telexfree associating it with Best Western
17 and that we invested in this -- or that the
18 company Ympactus had invested in this in
19 Brazil.

20 Q. Underneath the picture there is text,
21 correct, directly underneath it?

22 A. Mm-hmm.

23 Q. Could you read that text?

24 A. "Hotel Best Western opportunity."

1 Q. What does that text mean?

2 A. I have no idea because I know nothing of
3 anything that is related to the agents that
4 has to do with Best Western. I am unfamiliar
5 with anything to do with this.

6 Q. You testified that you saw a contract,
7 correct?

8 A. I did see a contract that Ympactus had
9 invested into this hotel.

10 Q. And you are a 20 percent owner of Ympactus,
11 correct?

12 A. I'm not sure when the contract was made. I
13 don't know if this had happened before or
14 after that, but in December I flew down there
15 to be part of Ympactus.

16 MR. BERTHIAUME: December 2012?

17 THE WITNESS: December 2012.

18 (BY MR. LEONE)

19 Q. Were you aware of Ympactus operations before
20 December 2012?

21 A. Yes.

22 Q. How were you made aware of those operations?

23 A. Carlos informed me, you know, how the
24 business was -- how that business was running

1 down there.

2 Q. Which Carlos were you talking about?

3 A. Carlos Wanzeler.

4 Q. Do you know where that play button leads?

5 A. No.

6 Q. Would it surprise you if I told you it led to
7 a YouTube video?

8 A. It wouldn't surprise me, but I've never seen
9 it.

10 Q. Do you know if Mr. Wanzeler has seen that
11 video?

12 A. I have no idea.

13 Q. Do you know who created that video?

14 A. I do not know.

15 (BY MR. O'HARA)

16 Q. Do you know if Telexfree had a video created
17 for this Best Western opportunity?

18 A. Not that I was made aware of, but there is a
19 lot of videos they do down there.

20 Q. Down where?

21 A. In Brazil.

22 Q. Who do you mean by "They do"?

23 A. Costa and the marketing team.

24 Q. You testified that you think the contract was

1 between Ympactus and Best Western --

2 A. Yes.

3 Q. -- was signed before you became a partner?

4 A. I'm not sure of that. I do not recall at
5 what time that this had happened.

6 Q. Okay. Does Ympactus still have a
7 relationship with Best Western?

8 A. I believe nothing has changed, but I don't
9 know for sure.

10 Q. What sort of agreement are Ympactus and Best
11 Western in?

12 A. It's to build this hotel and there is -- I
13 don't know the exact money that was put down,
14 but some money was put down and there was a
15 certain percentage that they would get a
16 return on their money, the corporation.

17 Q. Did Ympactus build a hotel yet?

18 A. I am not sure. I never get any information
19 whether the ground is broken and if they're
20 working on it. I don't know.

21 Q. I mean, is the picture that we're looking at
22 on this exhibit the picture of the Best
23 Western that Ympactus --

24 A. No, that's in English. I don't know where

1 they got that picture.

2 Q. Okay.

3 A. So I'm assuming that's just a picture they
4 took.

5 (BY MR. LEONE)

6 Q. Is anybody at Telexfree responsible for
7 reviewing the content of the website?

8 A. We've tried to. I sent a PowerPoint down
9 there on things I would like to see changed
10 as well as my -- but it falls on deaf ears.
11 Nothing ever changes.

12 Q. At any point did you try to change the Hotel
13 Best Western opportunity picture --

14 A. We have made mention of that. I don't know
15 if that was over the phone or in an email,
16 saying, you know, "In the United States, this
17 doesn't have any effect. People don't
18 understand why this is here. It's fine if
19 you want to keep it for the people of Brazil,
20 but it means nothing here in the U.S."

21 Q. But people in the U.S. can view this page,
22 correct?

23 A. They can.

24 Q. And this video?

1 A. Yes, I'm assuming that if it is for one
2 website, it's for all.

3 (BY MR. O'HARA)

4 Q. It says here, "Best Western opportunity."
5 You don't know what that phrase means?

6 A. I do not know what that phrase means.

7 (BY MR. LEONE)

8 Q. Generally, what's your understanding of the
9 word, "Opportunity"?

10 A. Well, I'm assuming there is a business
11 opportunity but I know for a fact there is no
12 MLM affiliation with anything to sell from
13 Best Western.

14 Q. What do you mean there is no MLM --

15 A. No network marketing affiliation. It is not
16 a product that we market to our agents in any
17 form or fashion.

18 Q. Well, I understand that it's not a product,
19 per se, but is there any other type of
20 marketing to you agents?

21 A. Not that I'm aware of.

22 MR. LEONE: Okay. I would like to go
23 ahead and collect Exhibit 5.

24 (BY MR. O'HARA)

- 1 Q. Going back to Exhibit 4, in the section where
2 there is the icons, the bottom right there is
3 an icon globe and it says, "My eWallet" do
4 you see that?
- 5 A. Yes.
- 6 Q. Can you tell us what this icon means?
- 7 A. I believe this is where the agents can see
8 their money, access their money.
- 9 Q. Okay. What do you mean by "access their
10 money"? How do they access their money
11 through this icon?
- 12 A. They can transfer money to their bank account
13 through this eWallet system.
- 14 Q. Okay. And how do they go about doing that?
- 15 A. I've never been through the process. I don't
16 know how that's done.
- 17 Q. How does money end up in this icon to begin
18 with?
- 19 A. Commissions paid and then they can transfer
20 their money to an I-Payout eWallet and then
21 access that money to their bank account. I
22 believe that's how it works.
- 23 Q. So Telexfree pays commissions --
- 24 A. Yeah, you accumulate commission in your back

1 office and then you transfer money from there
2 to your I-Payout wallet. You can, I believe,
3 have many options, to load money onto a
4 credit card or to their bank account or other
5 ways to remove the money from the system.

6 Q. Is the I-Payout wallet the eWallet that's
7 here?

8 A. I'm not sure. I think this is their eWallet
9 for Telexfree. It's their commission, that
10 they receive commission.

11 Q. So that's the place where they can view the
12 commissions that they've earned from
13 Telexfree?

14 A. I believe so.

15 Q. Okay. And then in order to turn those
16 commissions that are in the eWallet into
17 cash, they have to go through the process you
18 just described?

19 A. Correct. They go to I-Payout and then I-
20 Payout to their bank or credit card or
21 however they decide to take their money out.

22 Q. Can they do all of those steps from the back
23 office here?

24 A. I'm not sure because I think once they go to

1 I-Payout, they're on an I-Payout site. I
2 think it links them over, but again, I've
3 never been through that.

4 Q. Do you know if a representative has to have
5 an I-Payout account of some sort in order to
6 use --

7 A. Yes, that's the only way we can pay
8 commissions.

9 Q. Do they set up the I-Payout account up by
10 themselves or --

11 A. I'm not sure if it's automatically generated
12 when they create an account. I know in the
13 past when we had I-Payout and older
14 customers, there was a process to go through,
15 but I believe, and you can verify with Carlos
16 on this, that if they sign up to be a
17 Telexfree associate, that an eWallet is set
18 up, but I'm not 100 percent sure.

19 Q. And I-Payout, is that a third-party vendor?

20 A. Yes.

21 Q. That Telexfree has under contract for a
22 service?

23 A. Yes.

24 Q. Does Telexfree pay a fee for their service?

1 A. Yeah, again, I'm not exactly sure how the
2 fees work, but the agents pay a fee. I
3 believe we pay a fee also.

4 Q. And the agents pay a fee that's assessed by
5 who?

6 A. Through I-Payout there is a transfer fee and
7 things of that nature.

8 Q. Do you know what the fee costs to --

9 A. No.

10 Q. Do you know what Telexfree pays I-Payout for
11 their service?

12 A. I don't.

13 Q. Do you know who would?

14 A. I believe Carlos would probably have an idea,
15 but I think I could probably get that
16 information from Andrea how that works.

17 Q. Is Andrea in charge of paying invoices?

18 A. She's our bookkeeper.

19 Q. Okay.

20 (BY MR. NEELON)

21 Q. I believe you described a two-step process;
22 is that correct? So you go from Telexfree
23 back office to your eWallet and from your
24 eWallet to your bank; is that correct?

1 A. Yeah. We have a wallet attached to a bank
2 account. The agents have a wallet that's
3 attached to a bank account.

4 Q. But on the Telex end, there is funds both in
5 the eWallet account and in the bank account?

6 A. Right, exactly.

7 MR. LEONE: Why don't we collect
8 Exhibit 4.

9 (BY MR. O'HARA)

10 Q. I guess another follow-up. We don't need the
11 exhibit. When the Telex representative or
12 promoter transfers money from the eWallet to
13 his bank account and I-Payout processes that
14 transaction, is there any time delay in that
15 process?

16 A. I am not sure on that.

17 Q. Do you know who would know?

18 A. I mean, I could call I-Payout. They could
19 tell us what that time period is, but I don't
20 know.

21 (BY MR. LEONE)

22 Q. Moving forward, does Telexfree, Inc.
23 currently have a bank account?

24 A. Telexfree, Inc., I'm not sure of the answer

1 to that question.

2 Q. Well, either you know or you don't know.

3 A. I don't know.

4 Q. Do you know if Telexfree, Inc. has more than
5 one bank account?

6 A. We have a bank account with --

7 MR. BERTHIAUME: Wasn't the last
8 question about Telexfree, Inc.? I just
9 want to make sure I got --

10 MR. LEONE: It is, but I was just
11 making sure that -- maybe the question was
12 phrased incorrectly.

13 MR. BERTHIAUME: Okay.

14 THE WITNESS: I get really confused on
15 how the banking works here, but --

16 (BY MR. LEONE)

17 Q. Certainly, Mr. Merrill, as we move forward,
18 if you know the answer, answer.

19 A. I don't know the answer. I'm sorry.

20 Q. Okay. Has Telexfree, Inc. had bank accounts
21 in the past?

22 A. Yes.

23 Q. Do you recall any of those bank accounts?

24 A. Yes, we've had bank accounts with Bank of

1 America, Citizen's Bank, Wells Fargo, which
2 is existing right now, PNC Bank and T.D.
3 Bank.

4 Q. Any others?

5 A. For a short time period Fidelity Bank,
6 Fidelity Co-Op in Worcester.

7 Q. Any others?

8 A. That's to the best of my recollection.

9 Q. Starting with the Bank of America account,
10 were there more than one accounts opened at
11 Bank of America?

12 MR. BERTHIAUME: Of Telexfree, Inc.?

13 (BY MR. LEONE)

14 Q. Of Telexfree, Inc.

15 A. I don't know if there was more than one.

16 Q. There was at least one?

17 A. I believe so.

18 Q. Do you know when that account was opened?

19 A. That would have been in 2012 and it closed in
20 the same -- within like early summer to late
21 summer, I believe. That was our first
22 merchant service account, too.

23 Q. That would be the summer of 2012?

24 A. Mm-hmm.

1 Q. Who opened up that account?

2 A. I think that would be Carlos.

3 Q. Who had signatory authority on that account?

4 A. I think we both did.

5 Q. Do you know or do you don't know?

6 A. I don't know. That was a long time -- well,
7 to me a long time ago.

8 Q. Who had authority to transfer funds?

9 A. Carlos and if I was a signatory, I would have
10 had the ability to do so, also.

11 Q. Anyone else?

12 A. No.

13 Q. Moving on to the Citizen's accounts, is it
14 one account or more than one account?

15 A. Two accounts also.

16 Q. When were they opened?

17 MR. BERTHIAUME: When you say two
18 accounts also, did you say there were
19 definitely two at BOA?

20 THE WITNESS: I can't remember. I
21 really wasn't involved in the BOA banking
22 situation. I'm sorry, what was the
23 question?

24 (BY MR. LEONE)

1 Q. Was there one bank account open at Citizen's?

2 A. There was two.

3 Q. There were two, okay.

4 A. And a brokerage account.

5 Q. Were all of those accounts opened at the same
6 time?

7 A. Yes.

8 Q. When were they opened?

9 A. That would have been 2013, but I'm not sure
10 when.

11 Q. Who had signatory authority on those
12 accounts?

13 A. Carlos and myself.

14 Q. Who had authority to transfer funds?

15 A. Carlos and myself.

16 Q. Would there be anyone else who had authority
17 to transfer funds?

18 A. No, always we would have to be called if
19 there was any money moved.

20 Q. I believe you mentioned that Telexfree, Inc.
21 had a Wells Fargo account and still has a
22 Wells Fargo account; is that correct?

23 A. Yes.

24 Q. Is it just one account?

1 A. That I wasn't involved with either, so I'm
2 not sure on the details of those accounts.

3 Q. You weren't involved in opening up the Wells
4 Fargo account?

5 A. No, I was a signatory but I don't know how
6 many accounts we had.

7 Q. So would it be fair to say you're a signatory
8 on all of the accounts from Wells Fargo?

9 A. I believe so, yes.

10 Q. When were the Wells Fargo accounts opened?

11 A. Recently, within I would say a two-month
12 period.

13 Q. Other than yourself and Carlos, did anyone
14 have authority to transfer funds?

15 A. No, it would always be Carlos and myself.

16 Q. For any of the institutions you mentioned,
17 would any other individual have authority to
18 transfer funds?

19 A. I don't think Costa was ever involved as a
20 signatory, so it would be myself and Carlos.

21 Q. Moving on to PNC, did you have one account
22 opened there?

23 A. Two.

24 Q. When were those accounts opened?

1 A. Fourth quarter of 2013.

2 Q. Did you open up those accounts?

3 A. I did, Carlos and myself both did.

4 Q. Moving on to T.D. Bank, did you have one or
5 more than one account open with T.D. Bank?

6 A. Two accounts.

7 Q. When were those opened?

8 A. 2013, first quarter, I believe.

9 Q. And the Fidelity Co-Op bank, when --

10 A. That was a very short period of time, fourth
11 quarter 2013, maybe November and it closed in
12 December, December 31st.

13 Q. It looks like the first account for
14 Telexfree, Inc. was opened up in
15 approximately 2012; is that fair?

16 A. Yes.

17 Q. And it appears there is six banking
18 institutions that you listed?

19 A. Yeah.

20 Q. Why did Telexfree open up six --

21 A. A lot of those banks did not want to do
22 business with MLM companies and wanted to
23 close our accounts even though we were very
24 upfront with them about what we did.

1 (BY MR. O'HARA)

2 Q. Did they know Telexfree was an MLM company
3 when they opened the accounts?

4 A. Citizen's did, T.D. Bank. Bank of America,
5 no, I'm not sure if they knew what we did,
6 what industry we were in.

7 Q. For all of the banks you listed, did both
8 Telexfree, LLC and Telexfree, Inc. have
9 accounts at these institutions?

10 A. Yeah, that was why there was two.

11 Q. And for all of the accounts at these
12 institutions, was it only you and Carlos
13 Wanzeler that had --

14 A. That were signatories.

15 Q. -- were signatories?

16 A. Yes, I don't think anybody else had signatory
17 rights but us.

18 Q. And were there any debit cards issued linked
19 to any of these accounts?

20 A. Yes. There would have been some debit cards,
21 yeah.

22 Q. Who had access to use the debit cards?

23 A. Myself, Carlos and Steve Labriola would be
24 one who traveled a lot and needed a debit

1 card, for some of the accounts, but not all.

2 Q. Would anyone in the bookkeeping division have
3 permission to cut checks linked to these
4 accounts?

5 A. Cut checks, yes, and to wire funds. We would
6 need approval depending on the size.

7 Q. Okay. So they would need approval from one
8 of the signatories depending on the size?

9 A. Depending on the size.

10 Q. Okay. What was the kind of threshold on the
11 size?

12 A. I don't recall.

13 (BY MR. LEONE)

14 Q. Would it be fair to say that it varied?

15 A. Yes, it would vary.

16 (BY MR. O'HARA)

17 Q. Other than you and Wanzeler, who would have
18 the ability to write checks on Telexfree's
19 behalf from any of these accounts?

20 A. Well, a check would have to be signed by
21 Carlos or myself. They could cut the checks
22 but we would have to sign them.

23 Q. Okay. And then a wire would have to be
24 approved?

1 A. It would have to be approved.

2 Q. Other than the Wells Fargo account, are any
3 of the other bank accounts that you mentioned
4 currently open?

5 A. PNC.

6 Q. PNC, okay.

7 (BY MR. NEELON)

8 Q. And both Telexfree, LLC and Telexfree, Inc.
9 have accounts at PNC?

10 A. Correct.

11 (BY MR. LEONE)

12 Q. Were separate accounts opened for Telexfree,
13 LLC?

14 A. Yes.

15 MR. BERTHIAUME: You mean separate
16 from those already identified?

17 MR. LEONE: Yes.

18 THE WITNESS: Oh, no.

19 (BY MR. LEONE)

20 Q. So the universe of institutions and the
21 universe of accounts that you mentioned,
22 those would have been opened either under
23 Inc. or LLC.

24 A. Or LLC, with the exception of PNC which is

1 under the umbrella of Telexfree but it's
2 called Telex Financial and that makes
3 payments to vendors and employees as well as
4 Wells Fargo.

5 Q. What do you mean under the umbrella of
6 Telexfree?

7 A. Well, it would be -- it's a corporation that
8 was set up to be the financial arm of
9 Telexfree.

10 (BY MR. NEELON)

11 Q. So just to be clear, the account at PNC is
12 under the name of Telexfree Financial,
13 Incorporated?

14 A. Telexfree Financial.

15 Q. So Telexfree, Inc. and Telexfree, LLC do not
16 hold accounts PNC?

17 A. I'm sorry. I believe you're correct, yes.

18 Q. So what is the other account at PNC besides
19 Telex Financial, Inc.?

20 A. You know, I am a little confused. We might
21 have had one for all three of them.

22 MR. BERTHIAUME: Do you know?

23 THE WITNESS: I don't know, no. I
24 can't say for sure.

1 (BY MR. O'HARA)

2 Q. What's the purpose of Telexfree Financial?

3 A. To make payments to vendors and to pay the
4 office expenses.

5 Q. But any payments to reps, those go through I-
6 Payout?

7 A. I-Payout.

8 Q. They still do?

9 A. Yes. And that is Wells Fargo right now.
10 Wells Fargo has both Inc. and LLC.

11 Q. Earlier in your testimony I think you stated
12 that the reason Telexfree, Inc. was kept
13 going was to pay vendors.

14 A. That was the history that we could use for
15 our merchant services accounts because they
16 were all signed up as Inc. In order to
17 create an LLC merchant service account, we
18 would need more history so we always kept the
19 Inc. because of that.

20 Q. So how does creating Telex Financial solve
21 the issue of the history with the vendors?

22 A. It doesn't. It just allows us to pay our
23 terminators, you know, accountants, Joe
24 Craft, our attorneys.

1 Q. So is it that the contracts are still between
2 Telexfree, Inc. and the merchants and the
3 payments just go through Telex Financial; is
4 that fair?

5 A. I'm confused.

6 Q. I guess I'm confused. I'm just trying to
7 understand your answer. You said Telex, Inc.
8 was kept in existence in order to keep that
9 history.

10 A. For merchant services.

11 Q. Yes.

12 A. Yes.

13 Q. Okay. So Telex, Inc. isn't paying the
14 merchants, it's Telex Financial that's paying
15 the merchants?

16 A. Not merchant services is our credit card
17 companies.

18 Q. Oh, okay.

19 A. So we need to keep a history with Inc. of --
20 okay. Because anytime you needed to sign up
21 with a merchant service account, they wanted
22 to see who you were doing business with
23 before and you had to show a history and
24 since LLC has never had a history, we kept

1 Inc.

2 Q. Okay. Thanks.

3 (BY MR. LEONE)

4 Q. Could you describe a little bit your current
5 agreements with the merchant services
6 companies?

7 A. Yeah. It's all through I-Payout and all the
8 transactions all go through I-Payout but our
9 agreement is with Tom Wells at -- I forget
10 the name of his company, but we use Allied
11 and Argus is the merchant service companies.

12 Q. So what is Allied, what do they do?

13 A. They're a merchant service gateway.

14 Q. What does that mean?

15 A. They have the arrangements with the banks for
16 MasterCard and Visa.

17 Q. And Argus, is that the same as Allied?

18 A. As Allied, but they're all integrated with
19 the I-Payout System.

20 Q. Are they owned by I-Payout or are they
21 separate companies?

22 A. No, separate organizations that work with --
23 they're just integrated into their -- the pay
24 in/pay out system.

1 Q. Has Telexfree ever used any other merchant
2 services companies?

3 A. We started with PayPal and Bank of America
4 and neither one of those wanted to do
5 business with a network marketing company.
6 Then we went to a company called ProPay and
7 this is before I-Payout. Then we went to --
8 when we went to GPG -- I can't remember
9 exactly who is -- they had their own
10 arrangement with credit card merchant
11 services, and then with I-Payout, we went
12 with Allied and then Argus came in later.

13 Q. Does GPG stand for anything?

14 A. Global Payment Gateway, I believe.

15 Q. Before GPG was ProPay?

16 A. ProPay was our merchant service account. We
17 didn't have a payment gateway.

18 Q. So how would that work in operation without a
19 payment gateway?

20 A. We would have to make payments ourselves.

21 Q. How would you do that?

22 A. Wires to agents. It was quite a task.
23 That's why we searched out a payment solution
24 for us.

1 Q. What do you mean when you say it was quite a
2 task?

3 A. Thousands of wires. The girls in the office
4 were going crazy trying to keep up with
5 payments whereas in the I-Payout and the GPG
6 System, it works as a -- like automated,
7 where a spreadsheet would download, okay,
8 this amount of money goes to this user
9 account and you could do in one second, send
10 out thousands of payments.

11 Q. When you were using ProPay and you were
12 making the payments yourselves, were you also
13 receiving payments yourselves?

14 A. Yes.

15 Q. And where were those payments being made
16 during the time you had ProPay as a merchant
17 service company?

18 A. Probably was Citizen's and T.D. Bank.

19 Q. So agents would pay into bank accounts; is
20 that right?

21 A. Sometimes or wire us the money.

22 Q. How would they know Telexfree's bank account
23 number at Citizen's or T.D.?

24 A. It was on our website, I believe.

1 Q. Where on the website?

2 A. In the back office.

3 Q. So how would somebody --

4 A. I'm not 100 percent sure of that but somehow
5 or another they got the account number.

6 Q. Would it be possible for someone who has not
7 joined Telexfree during any period of time to
8 see the back office without first signing up?

9 A. Oh, no. No, they probably would have gotten
10 it from an agent.

11 Q. And where would an agent get that
12 information?

13 A. In the back office, I believe. If you could
14 verify that with Carlos. I'm not sure how
15 that happened back then.

16 Q. When you say back then, you mean
17 approximately two years ago, right?

18 A. Before the payment gateways were up, the I-
19 Payout and --

20 Q. When you were using ProPay, what was the
21 average monthly volume of payouts?

22 A. They didn't do payouts.

23 Q. That you were doing.

24 A. That was just pay in. That was just merchant

1 services, ProPay.

2 Q. During the period when Telexfree was using
3 ProPay, what was the average volume of
4 payment to agents from Telexfree?

5 A. I don't know.

6 Q. Could you guess?

7 MR. BERTHIAUME: I mean, unless you --

8 THE WITNESS: It's really hard to know
9 exactly what it was back then.

10 (BY MR. LEONE)

11 Q. Starting with PayPal, who terminated that
12 relationship?

13 A. PayPal.

14 Q. And why did they terminate the relationship?

15 A. We believe because we're an MLM. They don't
16 do business with MLMs.

17 Q. Did you disclose to PayPal prior to using
18 there services that you were a multi-level
19 marketing company?

20 A. I'm not so sure.

21 Q. Did you sign the agreement with PayPal?

22 A. I can't recall. That was the very beginning,
23 was PayPal and Bank of America. So I know I
24 didn't sign up for Bank of America, but I

1 can't recall if I did for PayPal.

2 Q. Moving on to ProPay, who terminated the
3 relationship with ProPay?

4 A. We were having an unusual amount of fraud, so
5 we left them to go to GPG which promised us
6 that they would protect our accounts and help
7 us with fraud. So at that point in time, we
8 kept using them but not as much as GPG. GPG
9 wanted the business so we went through their
10 processors.

11 Q. Okay. But my question is, who terminated the
12 relationship with ProPay?

13 A. We ended up stopping doing business with
14 ProPay and moving to GPG and then when we
15 stopped using ProPay, they basically said
16 they were terminating us.

17 Q. What service providers did GPG use?

18 A. I do not recall how merchant services were
19 through GPG.

20 Q. Who terminated the agreement with GPG?

21 A. GPG terminated the agreement.

22 Q. Why did they terminate the agreement?

23 A. I never got a real good answer on that, but
24 we were still having a lot of fraud through

1 their system and we were ready to move on to
2 another system anyways, but they -- I don't
3 recall the exact reason, but I know that they
4 gave us a notice of 30 days or so that we
5 have to close the accounts and they would
6 make some payments and that's when we got
7 involved with I-Payout.

8 Q. How did you receive that notice that you
9 mentioned?

10 A. That was by email from Jamie Almiere who set
11 up the account with us.

12 Q. Jamie works for --

13 A. Jamie is one of the owners of GPG.

14 Q. Was that email sent to you personally?

15 A. Yes, I think it was and to Jay Borromei
16 because Jay was always involved in anything
17 that had to be integrated with our system.
18 Jay worked with Jamie a lot on integrating
19 and making I-Payout work with our system.

20 Q. So for each service, PayPal, ProPay, GPG,
21 there would be a separate integration into
22 the website?

23 A. One for GPG and I-Payout. ProPay -- yeah, it
24 would be one for each.

1 Q. And then Jay would change that somehow?

2 A. However that works.

3 Q. Going back to the bank accounts that you
4 mentioned, who terminated the Citizen's
5 accounts?

6 A. Citizen's.

7 Q. And why did Citizen's terminate those
8 accounts?

9 A. They never told us.

10 Q. Who terminated the T.D. Bank accounts?

11 A. T.D. Bank.

12 Q. And why did they terminate the accounts?

13 A. The reserved the right not to tell us why.

14 Q. So you asked them?

15 A. Oh, yeah. I wanted an answer for each and
16 every one of those accounts. They gave me a
17 number and I would go to the branch and they
18 would say, "We can't speak to you. This is
19 our policy, if we chose to do business with
20 you or if we don't."

21 (BY MR. NEELON)

22 Q. Did Citizen's also terminate the brokerage
23 account?

24 A. Yes, it did.

1 (BY MR. LEONE)

2 Q. Did they provide a reason for why they
3 terminated the brokerage account?

4 A. Same.

5 Q. The brokerage account was held in which
6 entity's name?

7 A. It would be Telexfree, LLC, I believe

8 Q. I believe you testified that you had a short
9 relationship with Fidelity Co-Op bank?

10 A. Mm-hmm.

11 Q. Who terminated that relationship?

12 A. Fidelity.

13 Q. And why did Fidelity terminate --

14 A. Same. They don't give me any reason. We try
15 to ask and we don't really get an answer.

16 Q. Did you ever ask in writing?

17 A. Oh, through email, yes.

18 Q. And who did you email at Fidelity Co-Op Bank?

19 A. Fidelity was small. I just called them.

20 Q. How about T.D., did you email anyone there?

21 A. No. We would go to the branch and ask and we
22 would be given a number and we would call
23 that number and we would get no resolution on
24 why these things were happening.

1 Q. With Citizen's, did you ever make any request
2 for information on why the account was
3 terminated in writing?

4 A. Yes, especially with Citizen's.

5 Q. And was that via email or via writing?

6 A. Call and I would have to check to see if I
7 emailed them but there was a phone number
8 that they give you, the branch can't help
9 you.

10 Q. Has any Telexfree entity employed the
11 services of any financial professionals?

12 A. Such as --

13 Q. Such as an accountant or a securities broker?

14 A. Yeah, we're working with Price Waterhouse
15 right now and our accountant, CFO Joe Craft
16 is working with them right now.

17 Q. Is there a particular Telexfree entity that's
18 working with PWC?

19 A. Both.

20 MR. BERTHIAUME: When you say both --

21 THE WITNESS: Inc., LLC.

22 (BY MR. LEONE)

23 Q. Is there a particular Telexfree entity that's
24 working with Joe Craft?

1 A. Inc. and LLC.

2 Q. Starting with PWC, when did you obtain their
3 services?

4 A. First of the year of -- probably fourth
5 quarter of 2013.

6 Q. What is the scope of that engagement?

7 A. They're helping us set up tax structure and
8 we're also trying to get some help on our
9 banking issues.

10 Q. And Joe Craft, when was he first -- was he
11 first employed by one entity or the other
12 first or was it all at once?

13 A. I think all at once because Joe has just been
14 with us pretty close to the beginning when
15 all of those incorporations happened.

16 Q. When the incorporation of Telexfree entities
17 happened or when Common Cents?

18 A. No, not with Common Cents. When Common Cents
19 became Inc. and LLC came about, that summer.

20 Q. And what capacity have you employed Joe
21 Craft?

22 A. He was our CPA and he would -- anything
23 financial we would run by Joe. He was the
24 CFO of a few MLM companies and had the

1 experience so we wanted to bring him on
2 eventually as a CFO to help us. We need a
3 lot of help.

4 Q. And so he is currently the CFO?

5 A. Correct.

6 MR. BERTHIAUME: I mean, you've
7 testified -- he's testified about this
8 before, that he's in between being a
9 subcontractor and becoming --

10 THE WITNESS: He is what we consider an
11 acting CFO.

12 MR. LEONE: Okay.

13 MR. BERTHIAUME: I'm just saying, he is
14 not currently an employee?

15 THE WITNESS: No, but we're moving in
16 that direction.

17 (BY MR. LEONE)

18 Q. Okay. Has he performed accounting services
19 for you?

20 A. Absolutely.

21 Q. Does he file the entities tax returns?

22 A. Yes.

23 Q. Does he file your personal tax returns, as
24 well?

1 A. He does mine.

2 Q. Does Mr. Craft also prepare your balance
3 statements?

4 A. He does everything that we ask him for. He
5 works with our staff to try to pull together
6 reports.

7 Q. Just to be clear, so the record is clear,
8 does Mr. Craft conduct your balance sheet
9 reports?

10 A. Yes.

11 Q. And does he also conduct your profit and loss
12 reports?

13 A. Yes.

14 MR. BERTHIAUME: When you say conduct,
15 participate in the preparation of those
16 reports?

17 (BY MR. LEONE)

18 Q. Does he prepare them?

19 A. Yes. He works with Andrea and the girls in
20 the office to prepare those statements.

21 Q. Besides Andrea, who else works with Mr. Craft
22 to prepare those statements?

23 A. Mainly Andrea.

24 Q. And that would also be from the inception of

1 Telexfree, Inc., and Telexfree LLC?

2 A. Yes.

3 Q. Other than PWC and Joe Craft has Telexfree
4 ever employed the services of any other
5 financial professional?

6 A. No. I think that is pretty much it.

7 MR. LEONE: The time is 4:00. Why
8 don't we go off the record for a minute.

9 (Whereupon, the parties go off the
10 record.)

11 MR. LEONE: The time is 4:15. We are
12 now back on the record.

13 (BY MR. LEONE)

14 Q. Mr. Merrill, does Telexfree supervise
15 promoters?

16 A. No. They're independent agents.

17 Q. Has Telexfree ever supervised promoters?

18 A. We have policies and procedures, but they're
19 independent agents.

20 Q. Where are the policies and procedures found?

21 A. On the website.

22 Q. Have they always been found on the website?

23 A. I believe so.

24 Q. Where on the website are they found?

1 A. I don't know.

2 Q. Does Telexfree review promoter activity?

3 A. How do you mean that?

4 Q. Has Telexfree ever responded to any
5 complaints from anybody about any promoters?

6 A. If we get -- yes, we will call and if there
7 is something they're putting on YouTube or
8 whatever, we'll ask them to take it down,
9 that's not appropriate, if that's what you
10 mean.

11 Q. And has this occurred in the past?

12 A. Yes, a few times.

13 Q. How many times?

14 A. I don't know.

15 Q. Who has contacted the promoter?

16 A. Usually Steve Labriola. We get sometimes
17 notified by other agents that somebody is
18 doing something that they probably shouldn't
19 and Steve will contact them. He usually
20 rectifies the situation right there.

21 Q. I believe you said that Steve usually calls.
22 Is there anyone else who will call?

23 A. No.

24 Q. Can anyone become a promoter of Telexfree?

1 A. If they're over the age of 18.

2 Q. Other than the age requirement, are there any
3 other requirements?

4 A. I don't believe so.

5 Q. Does Telexfree review potential promoters
6 prior to them signing up with Telexfree?

7 A. I don't believe so.

8 MR. LEONE: I would like to introduce
9 a two-page exhibit which contains a
10 spreadsheet and a response produced to the
11 Division. That's Exhibit 6.

12 (Whereupon, Exhibit 6, Email Dated
13 4/23/13 with Attachment, is marked for
14 identification.)

15 (BY MR. LEONE)

16 Q. Mr. Merrill, please take a moment to review
17 the exhibit.

18 A. Okay.

19 Q. Mr. Merrill, have you had a chance to review
20 Exhibit 6?

21 A. I have.

22 Q. Do you recognize this exhibit?

23 A. Well, it sounds like what Gerry had sent from
24 our reports on the first request that you

1 guys had for us.

2 MR. BERTHIAUME: Do you remember this?

3 Do you recognize it is the question?

4 THE WITNESS: Oh, no. I don't think I
5 did see this.

6 (BY MR. LEONE)

7 Q. Could you describe the exhibit?

8 A. It's explaining the Team Builder Bonus and
9 Team Cycle Bonus and it looks like it's
10 showing an attachment, I'm assuming, people
11 that qualified for that.

12 Q. Would it be fair to label Page 1 as an email?

13 A. Yes.

14 Q. It would be fair?

15 A. Yes.

16 Q. And who is the email from?

17 A. Gerry Nehra.

18 Q. And who is it sent to?

19 A. Greenside, Michael Greenside and yourself,
20 Anthony Leone.

21 Q. And when was it sent?

22 A. April 23, 2013 at 5:39 p.m.

23 MR. BERTHIAUME: 4:39 p.m.

24 THE WITNESS: 4:39.

1 (BY MR. LEONE)

2 Q. And Mr. Nehra, was he associated with
3 Telexfree on April 23, 2013?

4 A. Yes, he is still associated.

5 Q. And what was his association on April 23,
6 2013?

7 A. He's our attorney.

8 Q. And is there a subject listed on this email?

9 A. Mass Team Builder Bonus US 2012.csv.

10 Q. Mr. Merrill, if I could rephrase the
11 question, perhaps.

12 A. Oh, sorry.

13 Q. Is there a subject listed on this email?

14 A. Oh, "Inquiry," sorry, "Inquiry No 3998."

15 Q. And is there an attachment or attachments?

16 A. Attachment, Massteambuilderbonus2012.csv.

17 Q. Do you know what Massteambuilderbonus2012.csv
18 represents?

19 A. I'm assuming it's Massachusetts residents
20 that achieved the Team Builder Bonus in 2012.

21 Q. Below the header, there is some text; is that
22 correct?

23 A. "Attached and below is in response to your
24 inquiries #7, and 8, and 9."

1 Q. Okay. So this email, was it produced to the
2 Division for any specific reason based on
3 your review of it?

4 A. Yes, for the request that you guys had made
5 to us early in 2013.

6 Q. And is there a section or a paragraph
7 starting with Team Builder Bonus?

8 A. Yes.

9 Q. And is that the Team Builder Bonus that we
10 were discussing earlier today?

11 A. Correct.

12 Q. And is there also a Team Cycle Bonus?

13 A. Yes.

14 Q. Does that reference any bonus that we
15 discussed earlier today?

16 A. Yes.

17 Q. And is there a name on this email from whom
18 it was sent?

19 A. From who it was sent?

20 Q. Yes.

21 A. Gerald Nehra.

22 Q. Turning to Page 2, could you describe this
23 page?

24 A. It's a list. It looks like a spreadsheet

1 with -- I'm not sure what the first column is
2 and then it's referencing the Team Builder.
3 It looks like a dollar amount, the person
4 that would have received it and I'm assuming
5 that's their user name and a date that it was
6 achieved.

7 Q. Okay. Do you recognize any names on this
8 list?

9 A. I know Jose Arantes. I know Sanderley. That's
10 about it.

11 Q. Could you give me Jose's full name?

12 A. Jose Arantes Neto.

13 Q. And does his name appear more than once on
14 this sheet?

15 A. Apparently, yes.

16 Q. How do you know Mr. Neto?

17 A. He is someone that we've known for a long
18 time. He is from Worcester and was involved
19 with WorldxChange. So we've known him for a
20 while.

21 Q. How did you first meet with Mr. Neto?

22 A. He doesn't speak any -- or very little
23 English. I'm not sure, but he might have
24 worked for my cleaning service for a while or

1 -- but I'm not 100 percent sure of that.

2 Q. Does Mr. Neto also have a user name?

3 A. I wouldn't know, but I can read this,
4 Cashonline.

5 Q. Is it your understanding that Cashonline is
6 Mr. Neto's username?

7 A. I'm guessing that is what this column is,
8 yes.

9 Q. Is Mr. Neto still a part of the Telexfree
10 system?

11 A. Yes, as far as I know.

12 Q. And how do you know that?

13 A. I haven't heard anything different of him
14 leaving us.

15 Q. You also mentioned the name Sanderley?

16 A. Sanderley, that's San.

17 Q. What is Sanderley's full name?

18 A. Sanderley Rodrigues de Vasconcelos, de
19 Vasconcelos, I think. .

20 Q. And does he go by any other names?

21 A. I don't know. I know him as San. That's how
22 I was introduced to him.

23 Q. And who introduced you to San?

24 A. Carlos.

1 Q. When were you introduced to him?

2 A. In 2012, maybe, late 2012.

3 (BY MR. NEELON)

4 Q. When you say Carlos, you mean Carlos --

5 A. Wanzeler.

6 (BY MR. LEONE)

7 Q. And how does Carlos know San?

8 A. I'm not really sure how they knew each other.

9 Q. Is San a promoter with Telexfree?

10 A. Yes, he is our biggest from what I
11 understand. I don't know exactly how big,
12 but he is one of our biggest.

13 Q. How would you know if he was the biggest?

14 A. People talk and say, you know, "This guy is
15 doing very well."

16 Q. Are there records at Telexfree which indicate
17 --

18 A. I'm sure.

19 Q. -- how much money promoters are making?

20 A. I'm sorry. Yes, I'm sure there is.

21 Q. Is Sanderley Rodrigues de Vasconcelos or San,
22 is his only role at Telexfree as a promoter?

23 A. Yes.

24 Q. And does Sanderley's name appear on this

1 sheet more than once?

2 A. Yes.

3 Q. How many times does Sanderley's name appear?

4 A. Four, but there is -- there is Sanderley de
5 -- I assume that's him also, so if I see
6 Sanderley with no space between the de and
7 Vasconcelos, I'm assuming that's him, but I
8 can't say for sure.

9 Q. So in looking at Page 2, there is at least
10 one entry which reads, "Sanderley Rodrigues
11 de Vasconcelos with a space, correct?

12 A. Correct.

13 Q. And there appears to be another entry right
14 below that, correct?

15 A. Right.

16 Q. "Sanderley devasconcelos with no space?

17 A. Right.

18 Q. Is it your understanding that that is the
19 same person?

20 A. I have no idea. I could guess, but -

21 Q. Has Telexfree used Sanderley Rodrigues de
22 Vasconcelos in any promotional materials?

23 A. He was on a banner for a -- the agents do
24 their own conferences, for a conference in

1 Spain. That's where I was, in Spain, and he
2 was on that banner, I believe.

3 Q. The agents put on that conference?

4 A. The agents put on that conference. It's not
5 a corporate-sponsored event.

6 Q. And we're talking about the event in Spain,
7 correct?

8 A. The event in Spain.

9 Q. You attended that event?

10 A. I did.

11 Q. And did you speak at that event?

12 A. I did.

13 Q. What did you speak about?

14 A. Telex App, Telex Mobile and, you know, the
15 company's future.

16 (BY MR. NEELON)

17 Q. Telexfree, Incorporated had no association
18 with the event?

19 A. No. It's put on by the agents, and they did a
20 very nice job, by the way, but we do not --
21 they bring us out to these events if they
22 want us to speak at them.

23 Q. Did Telexfree, Incorporated advertise for the
24 event?

1 A. Other than put that banner on the website,
2 no.

3 (BY MR. LEONE)

4 Q. Who created the banner?

5 A. It would have been created in Brazil.

6 Q. By Telexfree's IT team?

7 A. By -- probably, yes. I can't say for sure,
8 but I'm assuming.

9 (BY MR. O'HARA)

10 Q. What agents set up the conference in Spain?

11 A. I'm not sure at all. I know San has a big
12 group over there and there is a gentleman by
13 the name of Nilton that I met, but I don't
14 know who -- what group - there were people
15 from many countries there, so I don't know
16 who officially did all the work to set it up.

17 Q. What executives from Telex attended the event
18 in Spain?

19 A. Carlos Wanzeler, Steve Labriola and myself.

20 Q. And how long did that even last?

21 A. It was a Saturday and a Sunday and I left on
22 Monday. I got there on a Saturday. We had
23 some meetings on Saturday, a dinner Saturday
24 night. We had awards on Sunday and

1 presentations and -- really no business
2 presentations that I was at, but there was
3 some awards that they gave us from an MLM
4 association in Europe.

5 Q. What was the name of the association that
6 presented awards?

7 A. I can't recall.

8 Q. Who received an award?

9 A. We received on for Telexfree being the Number
10 One MLM in Europe at that time.

11 (BY MR. LEONE)

12 Q. Did any other entity receive an award?

13 A. I'm not sure.

14 Q. Did you stay for the whole awards ceremony?

15 A. Yes. They gave an award to Gerry Nehra who
16 is our attorney, gave one to Carlos, I
17 believe one was to Carlos Costa and one for
18 myself.

19 (BY MR. O'HARA)

20 Q. What did you receive an award for?

21 A. I'm not 100 percent sure, but I believe it
22 had something to do with being a top MLM in
23 Europe.

24 (BY MR. LEONE)

1 Q. How many people attended the awards
2 presentation?

3 A. It was 2,500.

4 (BY MR. O'HARA)

5 Q. Individuals?

6 A. Yeah.

7 Q. And what organization presented you with your
8 award?

9 A. I can look at it and send it to you but I
10 don't really -- it was an association. I
11 don't know who runs the association. I don't
12 know anything about that.

13 (BY MR. LEONE)

14 Q. Did you give a speech?

15 A. I did. Not long, I mean, I'm not the guy in
16 front of the microphone, but I said a few
17 words.

18 Q. In English?

19 A. Yes. That's the best I can do.

20 (BY MR. O'HARA)

21 Q. What did Carlos Wanzeler receive an award
22 for?

23 A. I don't know if they gave us three awards. He
24 spoke in Portugese and I'm really not sure

1 what he said. I thought it was for -- I
2 don't know.

3 Q. You don't know what he received an award for?

4 A. No.

5 Q. What did Carlos Costa receive an award for?

6 A. I don't know.

7 Q. What did Mr. Labriola receive an award for?

8 A. He didn't.

9 Q. He didn't? Okay. I'm sorry. I misheard you.
10 What did Mr. Nehra receive an award for?

11 A. MLM attorney, I think. I don't know.

12 (BY MR. LEONE)

13 Q. Could you describe the award?

14 A. It was big. It was hard to get in my
15 suitcase, but it said something in Spanish
16 and it said the association's name on it, so
17 I could get you guys that information when I
18 go back to the office.

19 Q. Do you still have the award?

20 A. Yeah, it's in my office. You can have it if
21 you want.

22 (BY MR. O'HARA)

23 Q. Were any other MLM companies present at the
24 awards ceremony?

1 A. I'm not sure. There was people from this
2 association on their association board that
3 was there and I don't know who these
4 individuals were.

5 Q. Did anyone not from Telexfree receive an
6 award from --

7 A. Oh, yeah, agents received awards.

8 Q. Agents from Telexfree?

9 A. Yes, agents of Telexfree.

10 Q. Did San Rodrigues receive an award?

11 A. I believe so.

12 (BY MR. NEELON)

13 Q. Were those awards also from the association?

14 A. Exactly.

15 (BY MR. LEONE)

16 Q. Was there any financial component to the
17 awards?

18 A. No.

19 (BY MR. O'HARA)

20 Q. At the awards presentation, I think you
21 testified there were about 2,500 people
22 there?

23 A. Yeah, maybe 2,000. I don't really know
24 exactly.

1 Q. Okay, 2,000. Were those individuals
2 Telexfree representatives?

3 A. Mostly.

4 Q. You also mentioned that there were business
5 meetings during the even in Spain?

6 A. Well, just to talk about Telex app and Telex
7 Mobile and what's coming down the line.
8 We're really fired up about that. We want to
9 see Telex app the new What's App out there
10 and it allows our agent's to call -- it
11 allows us to be an MVNO on any smart phone in
12 the world. So you download this app, you can
13 call directly to another app for free. If
14 you to call to a land line or a cell phone,
15 you can buy credit. So we're envisioning
16 this app going out to hundreds on their
17 social networks, each agent's social network
18 bringing in hundreds of customers that buy 5,
19 10, 15, \$20 worth of service. So we really
20 feel that can explode our business. So we're
21 excited about that. We wanted to get the
22 agents excited about that.

23 Q. And did any of the agents at the conference
24 make any presentations?

1 A. I wasn't at all of it, so I was there for the
2 awards section and then -- so, no, I wasn't
3 at any of the other -- whatever presentations
4 they did at that time.

5 Q. Do you know if any Telexfree agents made
6 presentations at the event in Spain?

7 A. I don't know.

8 Q. But it was hosted --

9 A. Hosted by the agents.

10 Q. Hosted by the agents. Did the agents have to
11 receive approval to have the even in Spain
12 from Telexfree?

13 A. Yeah, they would always need -- because
14 they've got to request us to be there, so I
15 would say yes.

16 Q. If an agent wanted to put on a presentation,
17 would they need approval from --

18 A. Not if they put on a presentation that was on
19 our site already, even though that one you
20 showed me today is incorrect. I don't know
21 if that's true in the Spanish and Portugese
22 version.

23 (BY MR. LEONE)

24 Q. Has Telexfree held any events for promoters?

1 A. We've had two. We had one in Orlando and one
2 California, Long Beach. Long Beach was the
3 summer of 2013. Orlando, I believe was in
4 the fourth quarter of '13 also, but most
5 agents put on their own conferences.

6 Q. Who was invited to the Orlando event?

7 A. Any agent that would like to come.

8 Q. And who was invited to the California, Long
9 Beach event?

10 A. Same, international or U.S. We put it on the
11 banner and people sign up for it.

12 Q. Why would an agent want to go to an event put
13 on by Telexfree?

14 A. To get information on the company, new
15 products. They like to be part of it. It's
16 really pretty social. I mean, they want to
17 get pictures taken with corporate.

18 (BY MR. O'HARA)

19 Q. Are the agents reimbursed for the expenses
20 they incur for putting on these conferences?

21 A. No, they're independent agents. They make a
22 choice to come. They pay for their own
23 expenses.

24 (BY MR. LEONE)

1 Q. Did the agents pay for you to go to Spain?

2 A. Yes, they did.

3 (BY MR. O'HARA)

4 Q. The agents that host the events, are they
5 reimbursed for costs they incur in order to
6 put on the event?

7 A. They run the whole thing. So they try to
8 cover their costs with what they charge
9 agents to come to the event.

10 Q. Oh, so agents pay to attend these events?

11 A. Yes. It's pretty normal in network
12 marketing.

13 (BY MR. NEELON)

14 Q. You mentioned earlier an event in Boston a
15 few weeks ago. Was that also put on by
16 agents?

17 A. No, that was corporate. I'm sorry. That's
18 right. The introduction of the new program
19 was corporate.

20 (BY MR. LEONE)

21 Q. And was there a fee to attend that program?

22 A. Yes.

23 Q. What was that fee?

24 A. 169, 164, something like that, which again,

1 is pretty par for the course for a network
2 marketing event.

3 Q. Could all agents have attended that if they
4 so chose to?

5 A. Yeah, any agent, they can sign up to attend
6 on our website.

7 (BY MR. O'HARA)

8 Q. Is there a requirement for agents to attend?

9 A. Absolutely not, no. It's their choice.

10 (BY MR. LEONE)

11 Q. Does Telexfree hold training events for its
12 agents?

13 A. Yes, this was a training event.

14 Q. Has Telexfree held training events in the
15 past for its agents?

16 A. Yeah, California and Orlando both had a
17 training aspect to it. They're for existing
18 agents.

19 (BY MR. O'HARA)

20 Q. In Orlando, what was the training aspect of
21 that event?

22 A. What was it?

23 Q. Yes, what was it.

24 A. It was training on product, training on how

1 I-Payout works, training on how the
2 compensation plan works, things like that.

3 (BY MR. LEONE)

4 Q. Other than Orlando and Long Beach, has
5 Telexfree ever put on any other trainings?

6 MR. BERTHIAUME: And Boston.

7 THE WITNESS: The new one in Boston.

8 (BY MR. LEONE)

9 Q. Other than that one as well?

10 A. I think that has been it.

11 (BY MR. O'HARA)

12 Q. What subjects were covered at the training in
13 Boston?

14 A. The new comp plan, the products, Telex App,
15 Telex Mobile. Telex Mobile is coming. We're
16 going to have all four national carriers as
17 an MVNO coming in the second quarter of this
18 year and the agents are pretty fired up about
19 that.

20 Q. What does MVNO mean?

21 A. Mobile virtual network operator. It's
22 similar to Virgin Mobile, Boost Mobile,
23 Tracfone, we're on the same Networks as
24 Sprint, AT&T, Verizon. We're one of the few

1 that have all four carriers and this is a big
2 thing for a network marketing company, so
3 we're expecting big growth in the second
4 quarter of this year.

5 (BY MR. LEONE)

6 Q. How do you know that the agents are fired up?

7 A. You can see film of it. I mean, when I'm
8 there, they're pretty fired up about it.

9 (BY MR. NEELON)

10 Q. Telex Mobile you said is a new separate
11 entity?

12 A. Telex Mobile is a product.

13 Q. It's a product, okay. Is it issued through
14 Telexfree, Inc.?

15 A. We market it through Telexfree.

16 (BY MR. O'HARA)

17 Q. The training that took place in Boston, so it
18 was giving information on how the products --
19 aspects of the products?

20 A. Exactly, products and the change in the
21 compensation plan.

22 (BY MR. LEONE)

23 Q. Do you know how many users currently use the
24 99 Telexfree program?

1 A. In February we had 580 thousand people that
2 purchased the VoIP account.

3 Q. And that's cumulative purchases?

4 A. That's both new users and reoccurring users
5 worldwide.

6 MR. BERTHIAUME: In February.

7 THE WITNESS: I'm sorry, what did I
8 say?

9 MR. BERTHIAUME: No, no, go ahead.

10 THE WITNESS: February, February of
11 this year.

12 (BY MR. O'HARA)

13 Q. So in February about 580 thousand 99 Telex
14 packages were sold to --

15 A. Approximately, Telex 99, right, and that's
16 without the app.

17 MR. BERTHIAUME: The 580 includes
18 reoccurring customers?

19 THE WITNESS: New customers and
20 reoccurring.

21 (BY MR. LEONE)

22 Q. Mr. Wanzeler, how are you compensated for
23 your work?

24 MR. BERTHIAUME: This is Mr. Merrill.

1 It's almost 5:00 for all of us.

2 (BY MR. LEONE)

3 Q. Mr. Merrill, how are you compensated for your
4 work at Telexfree?

5 A. We actually never took a check until this
6 year and we took a bulk check at the end of
7 2013.

8 (BY MR. O'HARA)

9 Q. When you say we, who are you referring to?

10 A. Carlos Wanzeler, Carlos Costa. Carlos Costa
11 received his as a marketing fee for himself.
12 Carlos Wanzeler and I received compensation
13 for -- of the sales of 2013.

14 Q. What was the compensation you received in
15 2013?

16 A. Three million for myself, three million point
17 five for Costa and Wanzeler.

18 Q. Each received 3.5 million?

19 A. Correct, a total of ten.

20 (BY MR. NEELON)

21 Q. Why did Mr. Wanzeler and Costa receive 3.5
22 million?

23 A. Well, the original agreement was me being 20
24 percent, so they compensated me for success

1 in the U.S., I guess.

2 (BY MR. LEONE)

3 Q. That agreement that you just mentioned, is
4 that in writing?

5 A. The original that we started with, with the
6 20, 50, 30 is not in writing and when Costa
7 came off the books, we wanted to make sure
8 that he got paid fair for his work.

9 Q. Have you filed tax returns for the 2013 tax
10 year yet?

11 A. I've got to check with Joe, but I think
12 everything's been filed and we've -- yeah,
13 Inc. and LLC, I'm not 100 percent sure. It's
14 -- we're close if not, we filed.

15 Q. Did you file a tax return for the 2012 tax
16 year?

17 A. Yes.

18 Q. And also for the 2011 tax year?

19 A. Not 2011, there was no business in 2011.

20 Q. How about yourself personally? Have you
21 filed a tax return for the 2013 tax year yet?

22 A. No, not yet.

23 Q. Have you filed a tax return for the 2012 tax
24 year?

1 A. Yes.

2 Q. And you filed a personal tax return for the
3 2011 tax year?

4 A. I have.

5 (BY MR. O'HARA)

6 Q. For Telexfree agents that receive commissions
7 from Telexfree, does Telexfree generate a tax
8 form for those individuals?

9 A. You mean a 1099?

10 Q. If that's --

11 A. Yes.

12 Q. That's the form that Telexfree sends to its
13 commission earning reps during the tax year?

14 A. Yes.

15 Q. Have those been received by --

16 A. The majority have. We've had a difficult
17 time putting those together and I believe
18 that the last of it goes out this week at the
19 very latest.

20 MR. LEONE: Why don't I collect the
21 exhibit. The time is 4:52. Why don't we
22 go off the record for a minute.

23 (Whereupon, the parties go off the
24 record.)

1 MR. LEONE: The time is now 5:05. We
2 are now back on the record. Counsel, is
3 there any other questions that you would
4 like or clarification to address with your
5 client?

6 MR. BERTHIAUME: No, we're fine.

7 MR. LEONE: Okay. With that, Mr.
8 Merrill, we will suspend your testimony.
9 We do reserve the right to call you back in
10 without the issuance of a new subpoena and
11 at this time, we are now off the record.

12 (Whereupon, the proceeding is
13 suspended at 5:07 p.m.)
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Change Made

[illegible]